

ALASKA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Alaska's water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges that pollute the waters of the state.

- Alaska law prohibits a person from "pollut[ing] or add[ing] to the pollution of the air, land, subsurface land, or water of the state."¹ The Alaska Department of Environmental Conservation (DEC) has broad authority to adopt pollution standards and "to determine what qualities and properties of water indicate a polluted condition..."²

If an activity presents "an imminent or present danger" to the people of the state or would result in or be likely to result in "irreversible or irreparable damage" to the environment, the DEC may issue an emergency abatement order without a hearing. The affected party may present proof to the contrary or prove that the order would impose "substantial private hardship."³ In the ordinary case, if the DEC has reason to believe that a violation has occurred or is about to occur, then it may notify the person involved and require a report stating the measures that have been or will be taken to correct or control the conditions. The DEC may issue a compliance order after the time period specified for filing the report.⁴ Superior court may also enjoin violations of statute, regulations, orders or permits.⁵ Sanctions imposed include civil penalties of between \$500 and \$10,000 for the initial violation and not more than \$5000 for each subsequent day of the violation. The court will determine the amount of the penalty based upon the characteristics of the substance discharged, the "sensitivity of the receiving environment," and the "degree" of environmental degradation. Costs to the state and the economic savings of the violator shall also be considered.⁶ If the violation occurs with criminal negligence, then it is a Class A misdemeanor.⁷

Other Discharge Limitations

- A person is guilty of nuisance under Alaska state law if the person puts a "dead animal...excrement, or a putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner ...pollutes...a spring, brook, creek, branch, well or pond of water that is or may be used for domestic purposes." It is a misdemeanor to neglect or refuse to abate a nuisance under this statute.⁸ The court may assess damages for costs of abatement.⁹ There is a similar nuisance provision for placement of "obnoxious" matter or things on land.¹⁰

- A discharge limitation is imposed whereby before beginning "to construct a hydraulic project, or use, divert, obstruct, *pollute*, or change the natural flow or bed of a specified river, lake, or stream, the person or governmental agency shall notify the commissioner..."¹¹ Proceeding without approval is a misdemeanor,¹² and sanctions are

calculated based on the cost of restoring a river, lake or stream to its original condition in addition to court penalties.¹³

Fish/Fisheries Laws

- A person is generally liable to the state if the person "violates or disregards an order, permit, or other determination" of the DEC under the Water, Air, Energy, and Environmental Conservation Code and "thereby causes the death of fish, animals or vegetation or otherwise injures or degrades the environment of the state..."¹⁴ The attorney general may recover damages under this provision, and liability includes costs recovered for the restocking of injured land or waters or to replenish a damaged or degraded resource or to otherwise restore the environment to its condition before the injury.¹⁵ It is a class A misdemeanor if criminal negligence is found.¹⁶

- Obstruction, diversion or pollution of "water of the state, either fresh or salt, utilized by salmon in the propagation of species, by ...casting, passing, throwing, or dumping tree limbs or foliage, underbrush, stumps, rubbish earth, stones, rock or other debris, or passing or dumping sawdust, planer shavings, or *other waste or refuse of any kind in those waters*" is prohibited without a permit.¹⁷ Also a permit is required to render the waters described above "inaccessible or *uninhabitable* for salmon for spawning or propagation."¹⁸ A violation of these provisions is a misdemeanor punishable by a fine of between \$100 and \$500.¹⁹ The permit may be granted if the purpose is "to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining, or other purposes tending to develop the natural resources of the state."²⁰

OPERATIONAL REQUIREMENTS

Forestry Requirements

- With respect to forest resources and practices, the state, with the DEC as lead agency, "should exercise its full responsibility and authority for control of *nonpoint source pollution* with respect to the Federal Water Pollution Control Act."²¹ While this policy is not itself an enforceable mechanism, the law further provides that the Commissioner of Natural Resources ("Commissioner") may issue nonpoint source pollution regulations subject to DEC approval.²²

- On state, municipal, and private forest land, state law provides that "environmentally sensitive areas" shall be recognized "in the development of regulations and best management practices that are designed to implement *nonpoint source pollution* control measures authorized under this chapter."²³ Also "significant adverse effects of soil erosion and mass wasting on water quality and fish habitat shall be prevented or minimized."²⁴

- Before operations begin on municipal or private forest land or on state land not managed by the division of forestry, the operator must submit to the state forester (who heads the division of forestry) a "detailed plan of operations" which must be reviewed within thirty days. Unless a stop-work order is issued or the agency extends the review period, the operator may commence work, at the latest, thirty days after submission of the plan.²⁵ The plan must be renewed annually. The state forester may grant a variance

from the statute or regulations if "the harm intended to be avoided by the requirement is not likely to occur because of site-specific circumstances relating to the particular activity and is not likely to cause harm to fish habitat or water quality."²⁶ Also small commercial operations and primarily noncommercial operations are exempt.²⁷ The Commissioner may assess civil fines and request that the attorney general seek an injunction for violations of directives or stop-work orders.²⁸ Upon making a determination that an activity violates this chapter, the state forester may issue a directive ordering the person to cease the violation or repair any resulting damage. If the person requests a hearing, then the activity may continue unless the state forester issues a stop-work order.²⁹ Where a person violates a directive requiring repair or correction of damage, the Commissioner may proceed with the repair and the violator is liable for the cost.³⁰ Violation of statute, regulation, directive or stop-work order can result in a maximum civil fine of \$10,000.³¹ If criminal negligence is found, then the violation is a Class A misdemeanor.³²

- For each state forest, the Commissioner is required to prepare a forest management plan that considers and permits various forest uses, as well as "soil characteristics, water quality and watershed management."³³ Under the Alaska Lands Act, regardless of whether a forest management plan has been prepared, before the Department of Natural Resources ("DNR") can authorize timber harvest (except for harvests of ten acres or less or timber salvaged from land cleared for nonforest use), the DNR must adopt a forest land use plan that considers, among other factors, fish and wildlife habitat, including retention of riparian, wetland and ocean-shoreline vegetation; water quality and watershed management.³⁴ Finally, the Commissioner is to adopt regulations to protect riparian areas that provide higher standards of protection for lands managed by the DNR than other public or private land.³⁵ Specifically, for state lands managed by the DNR, no harvest is permitted within 100 feet of the water body, subject to certain exceptions and depending upon whether the land is located north or south of the Alaska range.³⁶ Whereas the timber harvest riparian standards for private land located in a coastal spruce or hemlock forest vary depending upon the water classification, distance of the activity from the water body and slope stability standards. For other private forest land, riparian standards are established by regulation.³⁷ The same exemptions, enforcement mechanisms and sanctions apply here that are discussed above with respect to the general forestry provisions.

Agriculture Requirements

- Generally, Alaska state law regulates the licensing of pesticides.³⁸ More specifically, "a person may not spray or apply...pesticide or broadcast chemical in a manner that may cause damage to or endanger the health, welfare, or property of another person, or *in a manner that is likely to pollute the air, soil, or water of the state* without prior authorization of the [DEC]."³⁹ Enforcement and sanctions follow same provisions as outlined above under general discharge limitations.

Development and Other Earth-Disturbing Activities

- Alaska law provides for local land use regulation, planning and zoning, but state law does not prescribe specific nonpoint source duties in this context.

Endnotes

- ¹ Alaska Stat. 46.03.710.
- ² Alaska Stat. 46.03.070.
- ³ Alaska Stat. 46.03.820.
- ⁴ Alaska Stat. 46.03.850(a)-(c).
- ⁵ Alaska Stat. 46.03.765.
- ⁶ Alaska Stat. 46.03.760(a)(1)-(3).
- ⁷ Alaska Stat. 46.03.790(a)(1).
- ⁸ Alaska Stat. 46.03.800(a), (b).
- ⁹ Alaska Stat. 46.03.800(b).
- ¹⁰ Alaska Stat. 46.03.810.
- ¹¹ Alaska Stat. 16.05.870(b).
- ¹² Alaska Stat. 16.05.870.
- ¹³ Alaska Stat. 16.05.880.
- ¹⁴ Alaska Stat. 46.03.780(a).
- ¹⁵ Alaska Stat. 46.03.780(b),(c).
- ¹⁶ Alaska Stat. 46.03.790(a)(1).
- ¹⁷ Alaska Stat. 16.10.010(a)(1).
- ¹⁸ Alaska Stat. 16.10.010(a)(2),(3).
- ¹⁹ Alaska Stat. 16.10.030.
- ²⁰ Alaska Stat. 16.10.020.
- ²¹ Alaska Stat. 41.17.010(5).
- ²² Alaska Stat. 41.17.055(d).
- ²³ Alaska Stat. 41.17.060(b)(2).
- ²⁴ Alaska Stat. 41.17.060(b)(5).
- ²⁵ Alaska Stat. 41.17.090(c), (e), (i).
- ²⁶ Alaska Stat. 41.17.087(a).
- ²⁷ Alaska Stat. 41.17.900(c).
- ²⁸ Alaska Stat. 41.17.131(a),(d).
- ²⁹ Alaska Stat. 41.17.136,138.
- ³⁰ Alaska Stat. 41.17.131(e).
- ³¹ Alaska Stat. 41.17.131(a).
- ³² Alaska Stat. 41.17.131(b).
- ³³ Alaska Stat. 41.17.230(a).
- ³⁴ Alaska Stat. 38.05.112(a),(c).
- ³⁵ Alaska Stat. 41.17.115(b).
- ³⁶ Alaska Stat. 41.17.118(a).
- ³⁷ Alaska Stat. 41.17.116(a),(b).
- ³⁸ Alaska Stat. 46.03.320.
- ³⁹ Alaska Stat. 46.03.730.