ARIZONA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Arizona’s water pollution law has provisions that authorize development of a program for nonpoint source discharges, which may include, but does not require, development of enforceable mechanisms. It also has a general discharge prohibition applicable to intentional or grossly negligent discharges. Arizona also provides for aquifer protection permits that address some nonpoint source discharges to groundwater.

- Arizona law requires the Department of Environmental Quality (DEQ) to adopt not only permit requirements for point sources and for certain facilities likely to pollute aquifers, but also to adopt a “program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.” Thus, enforceable mechanisms could be created by regulation. Enforcement mechanisms available under the law generally include orders, injunctions, and court actions to recover civil penalties not to exceed $25,000 per day.

- Arizona’s general discharge prohibition makes it a criminal offense to discharge, with intent or gross negligence, any substance to waters without a required permit or other "appropriate authority," or to violate a water quality standard.

- Arizona has a regulatory program for aquifer protection permits that has some bearing on nonpoint discharges. Facilities that may produce discharges to groundwater require an aquifer protection permit. Some of these include nonpoint source activities, such as mines. The DEQ is further authorized to issue general permits under the aquifer protection program, including general permits requiring use of best management practices and addressing urban runoff, silviculture, and certain other activities.

Other Discharge Limitations

- Nuisance authorities provides some additional enforcement authority where specific health or environmental hazards can be shown. Arizona defines an environmental nuisance as "creation or maintenance of a condition in the soil, air or water that causes harm to the public health or the environment and that is not otherwise subject to regulation under this title." Examples include: "6. the pollution or contamination of any domestic waters" and "7. use of cesspools, septic tanks, or sewage for fertilizing or irrigation without approval." The director of DEQ may serve an abatement order, which becomes final in 30 days. Failure or refusal to comply with order enables DEQ to abate the nuisance itself and recover costs. DEQ may also file an action in superior court for enjoin further violation, compel compliance, or for abatement. Other nuisances, including some water-pollution related actions, are specified by law. Arizona also has a savings clause that preserves other causes of action, including public and private nuisance law.
• Another law provides that "No person shall dump, deposit, place, throw or leave refuse, rubbish, debris, filthy or odoriferous objects, substances or other trash on any waterways or the shorelines of any waterways of the state." Violation is a misdemeanor, and the violator may be ordered to "correct any unlawful condition, issued a written warning or written repair order, or issued a citation."  

• The crime of criminal littering or polluting is committed if a person unlawfully "1. Throws, places, drops or permits to be dropped on public property or property of another which is not a lawful dump any litter, destructive or injurious material which he does not immediately remove. 2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within the state..." The offense is a felony if it is a knowing violation, if the material exceeds 300 lbs. or 100 cu.ft., or if it is done for a commercial purpose. It is a misdemeanor if it is not a felony and "involves placing any destructive or injurious material on or within fifty feet of a highway, beach or shoreline of any body of water used by the public."  

Fish/Fisheries Laws

• The game and fish commission may bring an action against "any person, corporation, or government agency, to restrain or enjoin the person, corporation, or government agency from discharging or dumping into a stream or body of water in the state any deleterious substance which is injurious to wildlife." It is also unlawful to take a fish by any means other than angling unless otherwise provided by the commission, subject to fine of $10 and misdemeanor penalty. Because there is no intent requirement, this may provide some recourse for fish kills.

OPERATIONAL REQUIREMENTS

Forestry Requirements

State law does not appear to specify operational requirements related to nonpoint source water pollution from forestry activities.

Agriculture Requirements

• Arizona law provides that the director of DEQ shall adopt rules for agricultural general permits consisting of BMPs for "regulated agricultural activities" defined as "application of nitrogen fertilizer or a concentrated animal feeding operation." The agricultural general permits are not subject to the general legal criteria for general permits or BMPs. Individual permits for regulated agricultural activities are generally not required. Agricultural BMPs are those that DEQ has determined "to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities." The Director shall require "application of all economically feasible" BMPs that are the "most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity." Advisory committees were established to develop appropriate BMPs and recommend them to DEQ. Representatives from DEQ, the state department of agriculture, Dept. of Water
Resources, and college of agriculture at University of Arizona are on the committees. Use of BMPs may be waived in a specific region if DEQ determines that existing regulated agricultural activities will not cause or contribute to violations of water quality standards. Violation of the BMPs can result in revocation of the general permit after notice and opportunity for hearing and a requirement that the operation obtain an individual permit.

- Arizona law also directs the director of DEQ to adopt, by rule, a "surface water quality general grazing permit consisting of voluntary best management practices for grazing activities". The rule must be adopted within 180 days after receiving the recommendations of a grazing best management committee. The committee includes representatives of DEQ, the state Dept. of Agriculture, the Dept. of Water Resources, the dean of the University of Arizona College of Agriculture, and 3 cattle ranchers and 1 sheep rancher appointed by the governor. Although the director shall require the application of economically feasible VBMPs that are "the most practical and effective means" of reducing or preventing discharge of pollutants by grazing activities, the director "shall not require application of more stringent practices if such a requirement would result in cessation or significant reduction of grazing activity." The director may waive the use of voluntary best management practices in a designated region if he determines that existing grazing activities will not cause a violation of the adopted water quality standards for navigable waters. Because the law requires development of and issuance of a permit, it is arguably an enforceable mechanism, but the term "voluntary" may pose impediments to actions beyond simply requiring the permit.

- Arizona regulates pesticides and provides for permits, licensing, and certifications, including training requirements and reporting, buffer zones, pesticide management areas, and enforcement. Registration requirements designed to protect water quality are enforceable. Continued registration, sale, or use of a pesticide is not allowed if it would cause a "violation of water quality standards at the applicable point of compliance."

Development and Other Earth-Disturbing Activities

No operating requirements are set forth, apart from any that may be contained in urban stormwater programs under the federal Clean Water Act or that may be authorized by general land use regulation such as zoning. Boards of supervisors may adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

Endnotes