

IOWA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Iowa's water pollution law contains a general prohibition against unpermitted discharges of pollutants (defined as "wastes") into waters, which may be used to reach some types of nonpoint source discharges.

- "A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state...."¹ This prohibition, which is generally applicable, does not apply to the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit. Pollutant is defined as "sewage, industrial waste, or other waste."² "Other waste" is defined as "heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste."³ In addition, "[a] pollutant, whether treated or untreated shall not be discharged into any state-owned natural or artificial lake."⁴

Enforcement is primarily through cease and desist orders, civil penalties up to \$5,000 per day, injunctions, and criminal (serious or aggravated misdemeanor) prosecution.⁵ Cities and counties are authorized to assess a civil penalty equal in amount to the penalty assessed by the state.⁶

Other Discharge Limitations

- "A person shall not discard solid waste onto or in any water...of the state...."⁷ Enforcement of this provision is by civil penalty not to exceed \$500 for each violation.⁸

- "No person shall discard any litter onto or in any water... of this state..." Discard means "to place, cause to be placed, throw, deposit or drop," while litter is defined as "any garbage, rubbish, trash, refuse, waste materials or debris."⁹ Enforcement is by criminal (simple misdemeanor) prosecution. The court may also direct and supervise litter gathering in addition to or in lieu of any other sentence.¹⁰

- In 1987, Iowa adopted the Groundwater Protection Act, which authorizes the adoption of health-related groundwater standards. Although it expressly imposed no new legal liabilities, the Act created a linkage between the requirements of the state's water quality law and the Act's goal of preventing "contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical, and if necessary [restoring] the groundwater to a potable state, regardless of present condition, use, or characteristics."¹¹ The Act states generally that the "discovery of any groundwater contamination shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination as required under the water quality law."¹² More specifically, the Act states that "documentation of any

contaminant which presents a significant risk to human health, the environment, or the quality of life shall result in either passive or active cleanup," as defined in the law.¹³ The Groundwater Protection Act also provides an exemption from liability for certain agricultural activities – providing that liability shall not be imposed upon an agricultural producer for active cleanup costs or damages resulting from the detection of any quantity of nitrates if "application [of the fertilizer] has been in compliance with soil test results and...the applicator complied with label instructions for the application of the fertilizer."¹⁴ Liability also may not be imposed for pesticides in the groundwater provided the applicator had a license and complied with the label.¹⁵

- Under Iowa law, some nonpoint source discharges may be abatable as a nuisance. "Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance...."¹⁶ The law also specifically lists a number of nuisances, including: "the obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water," and "the corrupting or rendering unwholesome or impure the water of any river, stream or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others."¹⁷

If no other punishment is specifically provided for, those convicted of causing a public nuisance are guilty of an aggravated misdemeanor, and the court may order the nuisance abated and issue a warrant.¹⁸

Iowa law specifically provides that an animal feeding operation is not a nuisance under common law. But this provision does not apply if the person bringing an action proves either that an injury to the person or damage to the person's property is caused by failure to comply with a federal or state statute or rule applicable to such operation, *or* that the operation unreasonably interferes with the person's comfortable use and enjoyment of life and property and such operation failed to use existing prudent generally accepted management practices reasonable for the operation.¹⁹ Iowa law also provides that a farm operation located in a defined agricultural area is not a nuisance; however, this provision was recently struck down by the Iowa Supreme Court as an infringement on the property rights of neighboring property owners.²⁰ In any event, the exemption did not apply to actions involving negligence, nor did it affect or defeat the right to recover damages for "pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land."²¹ The exemption also did not restrict nuisance actions based on a structure, dam obstruction, deposit or excavation in a floodway in an agricultural area.²²

Fish/Fisheries Laws

State fisheries laws do not appear to contain enforceable provisions relating to nonpoint source discharges.²³

OPERATIONAL REQUIREMENTS

Forestry Requirements

State forestry laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

Agriculture Requirements

- Iowa's Soil Conservation Districts Law provides that in order to "conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion," owners of real property in the state must establish and maintain soil and water conservation practices or erosion control practices, pursuant to regulations adopted by the commissioners of the respective soil and water conservation districts.²⁴ Unless the claim is based on gross negligence, a landowner may not be liable for a claim based on a negligent soil or water conservation practice if that practice was in accordance with generally recognized engineering standards, or in compliance with the district's rules.²⁵

- The commissioners must adopt reasonable regulations to establish a soil loss limit for the district. The commissioners may require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices. The law places certain limits on the type of controls that may be required.²⁶ An owner of agricultural land is not required to establish any new permanent or temporary soil and water conservation practice unless cost-share or other public moneys have been specifically approved for that land and made available to the owner.²⁷

- The state Soil Conservation Districts Law also requires that prior to initiating a "land-disturbing activity" a person must file a signed affidavit that the project will not exceed the soil loss limits. Land-disturbing activity is defined as land changes such as the tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state. However, the definition excludes a number of activities, including the tilling, planting or harvesting of agricultural, horticultural or forest crops.²⁸

If, upon inspection, the commissioners find that sediment damages are occurring to the land of the complainant, the commissioners are to issue an administrative order to the landowner. The order states the time framework for establishing or maintaining soil and water conservation practices or erosion control measures.²⁹

- Iowa law, substantially expanded in 1998, addresses animal feeding operations, which are defined as "a lot, yard, corral, building or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation....An animal feeding operation does not include a livestock market."³⁰ State law authorizes the department of natural resources to adopt rules relating to the construction or operation of animal feeding operations. The law mandates that these

rules include minimum manure control requirements, requirements for obtaining permits, and departmental evaluations of animal feeding operations.³¹ Construction permits are required for such operations, and must include provision of an indemnity fee, a manure management plan, notice and comment managed by the county board of supervisors, and other requirements.³² Iowa law expressly provides that no permit may be issued if an enforcement action is pending or if the applicant is a "habitual violator" and the violation occurred within the past five years. The department is instructed to conduct an annual review of each feeding operation of a habitual violator.³³

Other statutory requirements relating to the construction and operation of animal feeding operations include:

(1) Manure controls. "A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state."³⁴ The law requires that manure be disposed of in a manner that will not cause surface or groundwater pollution. An owner who discontinues a confinement feeding operation must remove all manure within at least six months.³⁵ The applicant for a permit must submit a manure management plan, the requirements of which are outlined in the law.³⁶ The law also sets out detailed requirements for commercial manure applicator certification, and requirements governing application of manure to land.³⁷

(2) Separation distance requirements. State law prescribes the minimum separation distance between an animal feeding operation constructed and a residence not owned by the owner of the operation, or a commercial enterprise, religious institution or educational institution.³⁸ In addition, an animal feeding operation structure must be located 500 or more feet away from a major water source (meaning any navigable lake, reservoir, river, or stream), and from a surface intake, wellhead, or cistern of an agricultural drainage well or known sink hole; and it must be located more than 200 feet away from any watercourse that is not a major water source.³⁹

Enforcement of the animal feeding operation requirements is through cease and desist orders, civil penalties up to \$5,000 per day, and injunctions. The law provides additional penalties (\$500 per day) for violation of a court order mandating compliance with an order issued by the department. In addition, the law provides for civil penalties up to \$25,000 per day for "habitual violators."⁴⁰

- Under Iowa law, "(a) pesticide shall not be applied to any water of this state which has been classified by the department [of natural resources] as a class "A" or class "C", high quality, or high quality resource water, except that this section shall not...prohibit the application of such a pesticide by a certified applicator who is trained in aquatic applications and who has received a permit from the department."⁴¹ This provision may be enforced through the same mechanisms used to enforce the general pollutant discharge provisions described above.

- The department of agriculture is required by law to adopt rules establishing the proper use of pesticides, including their formulations, times, and methods of application, and other conditions of use.⁴² The law also provides that commercial applicators must comply with certification requirements. The department of

agriculture is required to adopt rules for the assessment of civil penalties up to \$500 for violations by commercial applicators.⁴³

Development and Other Land-Disturbing Activities

Apart from any programs for the control of urban stormwater under the federal Clean Water Act or that may be authorized by general land use regulation such as zoning, state law provides the following authorities applicable to nonpoint source discharges.

- The state's soil conservation law, described above, applies to "land-disturbing activities," defined to include land changes such as "tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state...."⁴⁴ Among the excluded activities are preparation of single family homes (unless as part of a subdivision development) and disturbed land areas of less than 25,000 square feet (unless a local ordinance provides otherwise).

- State law prohibits the building of "any pier, wharf, sluice, piling, wall, fence, obstruction, building, or erection of any kind upon or over any state-owned land or water under the jurisdiction of the [Conservation] commission, without first obtaining from the commission a written permit."⁴⁵ Enforcement of this provision is by criminal (simple misdemeanor) prosecution. In addition, the commission may order removal of the structure, or the commission may remove the structure and recover costs from the owner.⁴⁶

- "Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission."⁴⁷ Violation is a simple misdemeanor.⁴⁸

Endnotes

¹ ICA 455B.186.

² ICA 455B.171(18).

³ ICA 455B.171(15).

⁴ ICA 455B.186.

⁵ ICA 455B.175, 455B.191(1)-(4).

⁶ ICA 455B.192.

⁷ ICA 455B.307A.

⁸ ICA 455B.307A.

⁹ ICA 455B.363, 455B.361.

¹⁰ ICA 455B.364.

¹¹ ICA 455E.4.

¹² ICA 455E.5(2).

¹³ ICA 455E.5(5); ICA 455E.2(1),(8).

¹⁴ ICA 455E.6.

¹⁵ *Id.*

¹⁶ ICA 657.1.

¹⁷ ICA 657.2.

18. ICA 657.3.
19. ICA 657.11.
20. *Bormann v. Board of Supervisors* (Iowa S. Ct. Sept. 23, 1998).
21. ICA 352.11.
22. ICA 455B.275.
23. *Cf.* ICA 481A.76 (prohibits "use" of poisonous or stupefying substances "in the taking of fish.")
24. ICA 161A.43.
25. ICA 161A.43.
26. ICA 161A.44.
27. ICA 161A.48.
28. ICA 161A.64. Also excluded are: preparation of single family residence; minor activities such as home gardening; surface or deep mining; installation of utility lines; septic tanks; construction of tracks; emergency work; disturbed land areas of less than 25,000 square feet unless an ordinance states otherwise; and certain public road projects.
29. ICA 161A.47.
30. ICA 455B.161(3), 455B.171(2).
31. ICA 455B.173(13); 455B.200.
32. ICA 455B.200A.
33. *Id.*
34. ICA 455B.201(1).
35. ICA 455B.201.
36. ICA 455B.203.
37. ICA 455B.203A, 455B.203B.
38. ICA 455B.162, 455B.163.
39. ICA 455B.204.
40. ICA 455B.175; 455B.191(1),(4),(7); ICA 455B.182.
41. ICA 455B.186(2).
42. ICA 206.19.
43. ICA 206.5, 206.19.
44. ICA 161A.64.
45. ICA 461A.4.
46. ICA 461A.5, 461A.6.
47. ICA 461A.56.
48. ICA 461A.57.