

LOUISIANA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Louisiana's water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges that are not permitted or that pollute the waters, but the provisions do not apply to unintentional nonpoint source discharges from agriculture. Agricultural or silvicultural nonpoint sources do not require permits, and are not subject to enforcement under the unpermitted discharge provisions.

- The Louisiana Environmental Quality Act prohibits any person from conducting an activity "which results in the discharge of any substance into the waters of the state without the appropriate permit, variance, or license..."¹
- The statute also prohibits any person from discharging "any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order or regulation" or "any substance" that violates the terms or conditions imposed by a permit.²

Neither of these provisions is applicable to "unintentional nonpoint source discharge resulting from or in connection with the production of raw agricultural, horticultural, or aquacultural products."³ The Louisiana regulations also exclude from the permitting requirement "introduction of pollutants from nonpoint sources resulting from normal agricultural and silvicultural activities."⁴

A civil enforcement action may be brought by the Department of Environmental Quality ("DEQ"). Where a violation is determined to have occurred, the court may assess costs or where the violation is on-going, the Secretary may issue a cease and desist order. The violator may be subject to civil penalties of not more than \$25,000 for each day of violation where the substance does not endanger human life or health and where the substance does endanger human life or health, then a person may be liable for not more than one million dollars.⁵

Other Discharge Limitations

- Louisiana has a general nuisance statute⁶ which may apply to some forms of nonpoint source pollution. Louisiana's Right to Farm statute prohibits any agricultural operation from being deemed a public or private nuisance if it is conducted "in accordance with generally accepted agricultural practices" and the person bringing the action acquired the interest in the affected land after the date the operation was established or the operation was established prior to any change in character of the property in the vicinity of the operation.⁷ Illegal acts or actions based on negligence or intentional injury are exempt from this prohibition.⁸

Fish/Fisheries Laws

- "A person who [unlawfully] kills ...takes ...or injures any fish, wild birds, wild quadrupeds, and other wildlife and aquatic life...is liable to the state for the value of each..."⁹ Civil penalties, civil suits for recovery of value, fines, and criminal prosecution are permissible.¹⁰

- Louisiana law that provides for regional watershed districts (see Development and Other Earth-Disturbing Activities section) prohibits any person from knowingly or willingly draining from any pumps, reservoirs, wells, or oil fields into any stream or watershed "any oil...noxious or poisonous gases or substances which would render the water unfit for irrigation purposes or would destroy aquatic and fish life in the stream." Each day substances flow into the watershed waters constitutes a separate offense. Sanctions include fines of \$100-200 or imprisonment of three months or less.¹¹

OPERATIONAL REQUIREMENTS

Forestry Requirements

Louisiana law has few enforceable provisions relating to forestry operations that may be relevant to nonpoint source requirements.

- Louisiana law provides that any person who cuts standing cypress trees on water bottoms owned by the state of Louisiana, except in the exercise of rights under a state lease, right-of-way, or permit, is subject to a fine (up to \$5000) and/or imprisonment (up to six months).¹²

- The Louisiana Natural and Scenic Rivers Act allows the agency to regulate pollution of waters and provides for civil penalties of up to \$1000 per day for each violation.¹³ The Act also prohibits commercial harvesting of timber within 100 feet of the low water mark, with exceptions including selective harvesting of trees, cutting to control disease or insects, and harvesting timber for personal use by the person who owns or leases the property.¹⁴

Agriculture Requirements

- Conservation district supervisors may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion.¹⁵ The regulations to be adopted may include specifications of cropping programs and tillage practices; provisions requiring terminating cultivation in highly erosive areas; and provisions to assist in the conservation of soil resources and prevent or control soil erosion in the district.¹⁶ The regulations require approval by at least 2/3 of the landowners in the district in order to be effective and enforceable.¹⁷

- Louisiana law requires certification of private applicators of restricted use pesticides, commercial pesticide applicators and pesticide salespersons, licenses for pesticide dealers, and both licenses and certifications for all commercial agricultural consultants.¹⁸ For violations, the commissioner may assess civil penalties, suspend or

revoke a license or certificate or institute civil proceedings to enforce his rulings or seek injunctive relief.¹⁹ When the commissioner of agriculture ("commissioner") determines that the concentrations of pesticides exceed promulgated federal or state standards or pose a threat to human health or the environment, the commissioner may take appropriate action.²⁰ The commissioner is empowered to issue a stop order "prohibiting the distribution, sale, offer for sale, application, movement or disturbance of the pesticide, pesticide wastes or contaminated agricultural commodities or material."²¹ Upon determining that the pesticide concentrations exceed government standards, the commissioner may also issue protective orders to limit restrict or prohibit application of a pesticide; issue a remedial order directing any responsible person to take prompt action to correct any situation causing any waters of the state to be affected; communicate his determination to any appropriate agency; and/or issue a public communication.²² The commissioner may seek and obtain injunctive relief to prevent violation of the above orders, and he may impose civil penalties not to exceed \$25,000 per offense pursuant to an adjudicatory hearing. Each day is considered a separate offense.²³

- Discharges from concentrated animal feeding operations are subject to the LWDPS permit program, which is similar to federal NPDES regulation of these entities as point sources.²⁴ A concentrated animal feeding operation is designated as such on a case-by-case basis upon determining that it is a "significant contributor of pollution to the waters of the state," based on such factors as the size and location of the operation, the amount of wastes reaching the state waters, and the means of conveyance of animal wastes and process waste waters into the waters of the state.²⁵

Development and Other Earth-Disturbing Activities

Louisiana has several potentially applicable enforceable provisions in addition to any that may be contained in urban stormwater programs under the Clean Water Act or that may be authorized by general land use regulation.

- Louisiana law allows parishes to create environmental protection districts "to insure the prudent development of the land areas adjacent to and bordering the Mississippi River..." The powers of the board of commissioners of such a district include establishing and maintaining a master plan for the subdivision and development of those lands and preserving the natural environment of the lands along the river through the restriction of land usage.²⁶ Penalties include a \$5000 fine and imprisonment for not more than 30 days for each day of the violation.²⁷

- Louisiana law provides for regional watershed districts in which the board of commissioners may make and enforce rules that prevent damage to the district by solid or liquid pollution or substance or misuse of the waters of the district or any water course therein.²⁸

- "No industrial wastes...nor any noxious or harmful matter, solid, liquid or gaseous, shall be discharged into the side or cross ditches or placed upon the state highways without the prior written consent of the chief engineer...and the secretary of the department of health and hospitals."²⁹

- Coastal use permits are required for a variety of enumerated uses and activities, but this law excludes activity occurring wholly on lands five feet above mean sea level or activities occurring within fast lands, except for an activity that is found to have "direct and significant impact on coastal waters." Also excluded are agricultural, forestry and aquaculture activities on lands consistently used in the past for such activities.³⁰ Enforcement actions include injunctive, declaratory or other relief brought by the state (secretary or attorney general), district attorney or local government. The Secretary and local government with approved program have the authority to suspend, revoke, or modify coastal use permits. Sanctions include civil liability, damages, fines and/or imprisonment, and the Secretary may assess costs and administrative penalties.³¹

- Also see the Louisiana Natural and Scenic Rivers Act allowing the agency to regulate pollution of waters³² (described above under the forestry requirements section).

Endnotes

¹ 30 LRS 2075.

² 30 LRS 2076(A)(1).

³ 30 LRS 2076(A)(2).

⁴ 33 LAC Pt. IX, Sec. 301(D).

⁵ 30 LRS 2025.

⁶ Civil Code Article 669; 40 LRS 14.

⁷ 3 LRS 3603.

⁸ 3 LRS 3606.

⁹ 56 LRS 40.1.

¹⁰ 56 LRS 40.3-.8.

¹¹ 38 LRS 3087.9(B).

¹² 3 LRS 4278.1(F).

¹³ 56 LRS 1850, 1851.

¹⁴ 56 LRS 1854.

¹⁵ 3 LRS 1209.

¹⁶ 3 LRS 1209 (c), (d), & (e).

¹⁷ 3 LRS 1209.

¹⁸ 3 LRS 3241-46.

¹⁹ 3 LRS 3252.

²⁰ 3 LRS 3306(A).

²¹ 3 LRS 3205(A).

²² 3 LRS 3308.

²³ 3 LRS 3309.

²⁴ 33 LAC Pt. IX, Sec. 301(J)(1).

²⁵ 33 LAC Pt. IX, Sec. 301(J)(3)(a).

²⁶ 33 LRS 7555.

²⁷ 33 LRS 7559(G).

²⁸ 38 LRS 3087.8.

²⁹ 48 LRS 385.

³⁰ 49 LRS 214.34(a).

³¹ 49 LRS 214.35.

³² 56 LRS 1850, 1851.