MASSACHUSETTS
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Massachusetts prohibits the discharge of a pollutant from any source, not just point sources, without a permit; but agricultural and silvicultural nonpoint source discharges are exempt from the permit requirement by regulation.

- "Any person who, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth, except in conformity with a permit...shall be punished by a fine...or by imprisonment...or shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation."¹ "Pollutant" is defined as "any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major nonpoint source..."² The definition in the regulations lacks the word "major" preceding "nonpoint source."³

- Another section of the law prohibits the discharge of "pollutants" without a permit, and provides that "[n]o person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in discharge of pollutants into waters of the commonwealth" without a permit "unless exempted by regulation of the director."⁴

The regulations exempt from permit requirements "[a]ny introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands."⁵ Massachusetts may be able to directly enforce its surface water quality standards with respect to these activities.⁶

Enforcement mechanisms, in addition to civil penalties, include orders and injunctive relief.⁷

Other Discharge Limitations

- "Whoever places, throws, deposits, discharges, or causes to be placed, thrown, deposited or discharged, any trash, bottles or cans, refuse, rubbish, garbage, debris, scrap, waste or any other material of any kind . . . in or upon coastal or inland waters . . . or within twenty yards of any such water . . . shall be punished by a fine" and may be required to remove the material.⁸

- "No sewage, drainage, refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a town, public institution or water company for domestic use, or render it injurious to
health...shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into any feeders of such pond or stream within twenty miles above the point where such supply is taken."

- A similar provision provides for the abatement of situations where "manure, excrement, garbage, sewage or any other matter pollutes or tends to pollute the waters of any stream, pond, spring, underground waters, or watercourse used by [a] city, town, institution or company as a source of water supply." Failure to obey an order to abate the pollution is punishable by a fine, imprisonment, or civil penalty of up to $25,000 per day. Willful defilement of water supplies is defined as a criminal offense.

- Several prohibitions apply to nonpoint source discharges in particular managed public water supply watersheds. One provides that "no person shall take or divert any water of the watershed system of the division [of watershed management], and no person shall corrupt, render impure, waste or improperly use any such water." Within these designated watersheds, the alteration of land or the "generation, storage, disposal, or discharge of pollutants" is prohibited within 200 feet of the bank of a tributary or surface water, or within 400 feet of the bank of a reservoir. The law specifically prohibits in these areas outdoor storage of fertilizers, herbicides, pesticides, road salt, uncovered storage of manure, rendering more than ten percent (or 2500 sq. ft.) of any lot impervious, altering vegetated wetlands, or "any other activity which could degrade the quality of the water in the watersheds." This section does not apply to "activities relating to the normal maintenance or improvement of land in agricultural use...provided, however, that such activities do not impair the quality of the water." Enforcement includes fines.

- The attorney general also has general authority to prevent or remedy damage to the environment, including water pollution, and may enforce any statute, ordinance, bylaw or regulation or secure any common law right or remedy, including the abatement of public nuisances. Local boards of health have power, like the department of environmental protection, to enforce certain state environmental laws dealing with on-lot sewage disposal systems. Boards of health also may abate nuisances that may be injurious to public health. While this may include agricultural nuisances, it may not include odors and noise from normal farming and livestock practices.

- The state’s environmental agency may "for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife, fresh water fisheries, and irreplaceable wild, scenic and recreational river resources, adopt...orders regulating, restricting or prohibiting...polluting the scenic and recreational rivers and streams of the commonwealth." The commissioner’s jurisdiction under this section extends to the rivers and streams themselves and to such contiguous land not to exceed one hundred yards on either side of the natural bank of such river; and the orders are to be recorded in the property records for the county wherein the lands are located. Enforcement is by injunction, and by fines.
Fish/Fisheries Laws

- Placing or allowing the runoff into coastal waters of "any oil, poisonous or other injurious substance, including but not limited to, sawdust, shavings, garbage, ashes, acids, sewage, and dyestuffs...or heated effluent, which directly or indirectly materially injure fish, fishspawn or seed therein" is an offense punishable by fine and/or imprisonment.\textsuperscript{22}

- A similar provision applies to the discharge of "sewage or any other substance which might be injurious to the public health or might tend to contaminate any shellfish areas or shellfish therein....or injuriously affect the fisheries therein..."\textsuperscript{23}

- "A person shall not put, throw, discharge or permit to be discharged or to escape into any inland waters of the commonwealth any waste or other material, in violation of [Massachusetts' wetlands act or clean water act]... which may directly or indirectly injure or kill the fish or fish spawn therein." Any actions that "directly or indirectly" injure or kill or damage fish or fish spawn in the inland waters of the state, except as specifically authorized, result in liability to the state for twice the amount of the damage thereby done.\textsuperscript{24} Fines or imprisonment are also provided for.\textsuperscript{25}

OPERATIONAL REQUIREMENTS

Forestry Requirements

- Under the Forest Cutting Practices Act the state forestry committee, subject to approval of the commissioner for environmental management, must prepare minimum forest cutting practices and guidelines.\textsuperscript{26} Under the Act, landowners must give prior notice of intent to harvest to both the director of the division of forests and parks and to neighboring property owners. The notice must include the proposed cutting plan. The harvest may not begin until the director has provided a final work order, unless the director fails to act within ten days (this exception does not apply in wetland areas).\textsuperscript{27} Enforcement is by stop work order and fine of up to $100 per acre.\textsuperscript{28} The law does not apply to cutting for the owner’s own use, to cutting or sale not exceeding 25,000 board feet or 50 cords, or land clearing activities.\textsuperscript{29} The law requires a license to harvest timber or other forest products for hire or profit, and requires licensees to demonstrate familiarity with the state’s laws on forestry and timber harvesting; enforcement is by fine and injunction.\textsuperscript{30}

- State law prohibits the placement of slash within 25 feet of any continuously flowing stream, any pond, river, or water supply.\textsuperscript{31}

- Forestry operations in wetlands are subject to additional regulations and to Best Management Practice requirements.

Agriculture Requirements

- Massachusetts law does not appear to prescribe enforceable practices with respect to agriculture, except with respect to certain agricultural activities occurring in
or near wetlands. Use of Best Management Practices in these areas is required by regulations.

- Massachusetts does regulate pesticides, including licensing of dealers, and its law provides that "no person shall distribute, handle, dispose of, discard, or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, to cause damage to the environment, or to pollute or contaminate any water supply, waterway, groundwater or waterbody." The law also provides general order authority whenever it appear that there is an imminent hazard or a potential threat of unreasonable adverse effect on the environment. Enforcement provisions include fines, injunctions, criminal sanctions, and injunctions.

Development and Other Earth-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 does not prescribe detailed operating requirements.

- However, certain construction activities in wetlands, floodplains, and riverbanks are regulated under state law and bear on nonpoint source pollution in these areas. Massachusetts has detailed wetlands protection regulations.

Endnotes
5. Mass. Regs. Code tit. 314, § 3.05. These regulations do not exempt concentrated anominal feeding operations, concentrated aquatic animal production facilities, aquaculture projects, or silvicultural point sources.
21. Id.