

MINNESOTA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Minnesota's water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges.

- Minnesota has a general statutory provision obligating every person to "notify" the state of the discharge of "any substance or material" that "may cause pollution of the waters" and the discharger to take all reasonable actions to "minimize or abate" the pollution caused.¹ However, the most explicit discharge limitation on nonpoint sources is found in the state rules, stating, "No sewage, industrial waste or other wastes shall be discharged from either a point or *nonpoint source* into the waters of the state in such quantity or in such a manner alone or in combination with other substances as to cause pollution..."² Enforcement includes criminal prosecution, civil penalties, injunction, action to compel performance, and any "other appropriate action."³

Other Discharge Limitations

- A separate authority addresses the pollution of public water supplies. "No sewage or other matter that will impair the healthfulness of water shall be deposited where it will fall or drain into any pond or stream used as a source of water supply for domestic use." The state Commissioner of Health has broad authority to issue to any person orders and direction that it deems "proper and expedient" to desist from causing pollution.⁴

- The state law generally authorizes county boards of commissioners to adopt ordinances that "provide for the cleaning and removal of obstructions from waters in the county and to prevent obstruction or pollution."⁵

- General nuisance law in Minnesota identifies nuisance as, "Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property..."⁶ The state regulations apply nuisance directly to nonpoint sources by specifying that "No sewage, industrial waste or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum,...excessive suspended solids, material discoloration...undesirable slimes or fungus growths, aquatic habitat degradation, excessive growth of aquatic plants or other harmful effects."⁷ Agriculture operations are not considered a nuisance, except where the operations are negligent or contrary to acceptable agricultural practices, cause direct injury or threat of injury to health/safety of any person, cause water pollution, are large animal feedlots; or result in criminal prosecution.⁸ The maximum fine for causing nuisance is \$700, and prosecution or civil action may result.⁹

- Minnesota's groundwater protection law requires the pollution control agency to develop best management practices; and the commissioner of agriculture must develop best management practices for agricultural chemicals and practices.¹⁰ The respective regulatory agency may adopt water source protection requirements "if the implementation of best management practices has proven to be ineffective."¹¹ Violators of a water source protection requirement are subject to the penalties prescribed under the pollution control act, except for agricultural chemical violations, which are subject to the penalties prescribed for agrichemical spills and violations.¹²

Fish/Fisheries Laws

- The state has a general prohibition against disposing of "substances" in state waters that "injure or are detrimental to the propagation of wild animals or taint the flesh of wild animals,"¹³ which are specifically defined to include fish.¹⁴ Each day of propagation is a separate offense.¹⁵ Another provision prohibits "taking" fish with a range of specific substances, including "explosives, drugs, poisons, lime,... or other similar substances" or substances that "kill, stun or affect the nervous system of fish."¹⁶ Pesticides are excluded from this list of substances.¹⁷ Punishment for violation of these provisions are fines ranging from \$100 to \$3000 and incarceration for between 90 days and one year.¹⁸ The Commission of Natural Resources is charged with deciding whether to take action against a violator.¹⁹

OPERATIONAL REQUIREMENTS

Forestry Requirements

Minnesota has few provisions regulating private forestry operations with respect to nonpoint source water pollution and none that appear to be enforceable. Its Sustainable Forest Resources Act of 1995 provides for voluntary guidelines.²⁰

- The Department of Natural Resources commissioner retains some discretion to protect state lands and related water bodies. A statutory provision prevents the commissioner from selling for private forest management state forests that "border on or are adjacent to meandered lakes or public waters and water courses," and if the commissioner harvests these state lands, the commissioner must "reserve the timber and impose other conditions deem(ed) necessary to protect watersheds, wildlife habitat, shorelines and scenic features."²¹ Clear cutting is prohibited where "soil, slope or other watershed conditions are fragile" and where it occurs within certain distances within a "wild, scenic and recreation river."²²

Agriculture Requirements

- Local governments are "encouraged" to adopt a soil loss ordinance, which states that "a person may not cause, conduct, contract for or authorize an activity that causes excessive soil loss," as "evidenced by sedimentation on adjoining land or in a body of water." *However, agricultural uses are exempted* from the soil loss ordinance as long as the farmer is using "best practicable conservation practices." The soil loss also applies to pastures used for grazing or cattle paths. *Where a locality has chosen to adopt it,* the soil loss ordinance is enforced by a complaint submitted to the local government

from, an adversely affected landowner, an official of local government, or a soil and water district board member.²³ Following filing of the complaint, the landowner must participate in mediation and failure to comply with the mediated settlement may result in a civil penalty of up to \$500.²⁴ Other statutory provisions provide that local ordinance violations can result in criminal prosecution and a maximum fine of up to \$700.²⁵

- State permits or agency certificates of compliance are required for construction, location and operation of animal feedlots, or manure storage facilities that create a "potential pollution hazard" and where animal manure used for domestic fertilizer is stored for longer than one year.²⁶ Feedlots with more than 1000 animal units must obtain a discharge permit from the pollution control agency. Proposed regulations slated for consideration in 1999 would require permits for all facilities with greater than 50 animal units by the year 2004. A 1998 law also requires commercial manure applicators to be licensed by March 2000.²⁷

- The state has a relatively broad prohibition addressing harm from pesticide use, handling and application. "A person may not use, store, handle, distribute or dispose of a pesticide...that endangers humans, damages agricultural products, food, livestock, fish or wildlife or that will cause *unreasonable effects on the environment*."²⁸ Pesticide applicators require licensing.²⁹ Application of chemigation requires a permit from the commissioner.³⁰ Where there are violations, the commissioner is authorized, but not required, to "take action necessary to prevent" groundwater contamination resulting from leaching, backsiphoning or backflowing of pesticides through the soil or water wells or from the direct flow of pesticides to the groundwater. Agrichemical practices that adversely affect groundwater are described above under "Other Limitations." In addition, Minnesota law provides for corrective action and enforcement actions with respect to agrichemical spills.³¹

- Minnesota also regulates fertilizer activities, prohibiting the storage, handling, distribution, or disposal of fertilizer, rinsate, or application equipment in such a manner that will endanger humans, fish, or wildlife, that will cause unreasonable adverse effects on the environment or that will cause contamination of public or other waters of the state.³² It also licenses applicators.³³

- Minnesota has a broad prohibition against draining materials into a ditch, providing that it is a misdemeanor to "drain any noisome materials into any ditch,"³⁴ The drainage authority is also required to consider various environmental impacts resulting from a proposed drainage project including the "effect on water quality."³⁵

Development and Other Earth-Disturbing Activities

Designation of a "critical area" and a statutory provision requiring a sediment control plan and a permit for "development activity" disturbing over one acre of land are enforceable restrictions on development activities that may cause nonpoint source pollution.

- Prior to engaging in a "development activity" that will disturb over one acre of land, a person must seek and obtain a permit from the local government contingent

upon implementation and completion of a sedimentation control plan and time schedule that prevents excess soil loss.³⁶ A "development activity" means "a physical disturbance of the land that may result in sedimentation of adjacent lands or waters, associated with activities that include clearing, grading, excavating, transporting and filling lands," but excludes "road construction."³⁷ Failure to obtain a permit or to make satisfactory progress to complete the plan is subject to a civil penalty.³⁸

- A critical area is "an area significantly affected by, or having effect upon, an existing or proposed major government development which is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and which tends to generate substantial development or urbanization," or "an area containing or having significant impact upon historical, natural, scientific, or cultural resources or statewide importance"³⁹ Once such an area is established, then the statute prohibits issuance of development permits by local or state agency.⁴⁰ However, certain exceptions exist that result in issuance of a development permit: If no critical site plans and regulations have been adopted by the local government (as required under the Rules), if a local ordinance was in effect immediately prior to the designation of the critical area that would have granted a development permit, and there is an emergency or need to protect public health and safety, then the local government may grant a development permit.⁴¹ If the Minnesota Environmental Quality Board determines that the administration of the local plans and regulations "is inadequate to protect the state or regional interests," then the Board may compel enforcement of the plans and regulations.⁴²

- To protect the state shoreline, the DNR Commissioner shall adopt model standards and criteria for the "subdivision, use and development of shoreland" and adapt the model ordinance for use in a county that has an inadequate shoreland conservation ordinance or none at all.⁴³ Violations of the shoreland conservation ordinance or model standards are considered misdemeanors and are enforced through the actions by the county commissioners or by mandamus proceedings instituted by any taxpayer to compel specific performance by an official.⁴⁴ Fines of \$700 can be assessed.⁴⁵ As part of a locally-enforced, ordinance-based shoreland management system, "on-site sewage treatment systems must be set back from ordinary high water level by distances ranging from 50 to 150 feet." (Certain designated areas within the wild, scenic and recreation rivers program have required set backs of 50 feet.)⁴⁶ There is criminal prosecution for violation of these ordinances and a maximum fine of \$700.⁴⁷

- A floodplain management ordinance, which is required to be adopted, administered and enforced by local governments, prohibits placement of a structure, fill, deposit or other floodplain use that is "unreasonably hazardous to the public."⁴⁸ Placement of any of the aforementioned is considered a public nuisance and can be enjoined or abated through civil action or prosecuted criminally as a violation of a local ordinance. Each violation is subject to prosecution as a misdemeanor, and the maximum fine is \$700.⁴⁹

Endnotes

- ¹ Minn. Stat. 115.061.
- ² Minn. Rules 7050.0210(13).
- ³ Minn. Stat. 115.071.
- ⁴ Minn. Stat. 144.35.
- ⁵ Minn. Stat. 145A.05(5).
- ⁶ Minn. Stat. 561.01.
- ⁷ Minn. Rules 7050.0210
- ⁸ Minn. Stat. 561.19
- ⁹ Minn. Stat. 561.01, 609.025, 609.033.
- ¹⁰ Minn. Stat. 103H.151.
- ¹¹ Minn. Stat. 103H.275.
- ¹² Id.; see Minn. Stat. ch. 18D (up to \$7500 per violation).
- ¹³ Minn. Stat. 97C.065.
- ¹⁴ Minn. Stat. 97A.015(55).
- ¹⁵ Minn. Stat. 97C.065.
- ¹⁶ Minn. Stat. 97C.325.
- ¹⁷ Minn. Stat. 97C.065.
- ¹⁸ Minn. Stat. 97A.301.
- ¹⁹ Minn. Stat. 97A.205, 97C.065.
- ²⁰ Minn. Stat. Ch. 89A.
- ²¹ Minn. Stat. 92.45.
- ²² Minn. Rules 6105.0150.
- ²³ Minn. Stat. 103F.405, 103F.415, 103F.421.
- ²⁴ Minn. Stat. 103F.455.
- ²⁵ Minn. Stat. 488A.01, 488A.10, 488A.27.
- ²⁶ Minn. Rules 7020.0400.
- ²⁷ See State of Minnesota, Feedlots: Summary of 1998 Legislation.
- ²⁸ Minn. Stat. 18B.07.Subd.2.
- ²⁹ Minn. Stat. 18B.33, 18B.34.
- ³⁰ Minn. Stat. 18B.08, 18B.10.
- ³¹ Minn. Stat. Ch. 18D.
- ³² Minn. Stat. 18C.201.
- ³³ Minn. Stat. 18C.425.
- ³⁴ Minn. Stat. 160.27.
- ³⁵ Minn. Stat. 103E.015.
- ³⁶ Minn. Stat. 103F.441.
- ³⁷ Minn. Stat. 103F.401.
- ³⁸ Minn. Stat. 103F.441.
- ³⁹ Minn. Stat. 116G.05.
- ⁴⁰ Minn. Stat. 116G.11.
- ⁴¹ Minn. Stat. 116G.12.
- ⁴² Minn. Stat. 116G.09, Minn. Rules 4410.9600.
- ⁴³ Minn. Stat. 103F.211, 103F.215.
- ⁴⁴ Minn. Stat. 394.37.
- ⁴⁵ Minn. Stat. 609.034.
- ⁴⁶ Minn. Rules 6105.0650, 6120.3400.
- ⁴⁷ Minn. Stat. 488A.01, 488A.10, 488A.27, 609.034.
- ⁴⁸ Minn. Stat. 103F.121(1), (5).
- ⁴⁹ Minn. Stat. 103F.145, 488A.01, 488A.10, 488A.27, 609.033, 609.034.