

NEBRASKA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Nebraska's water pollution law includes provisions that may be used to take action against nonpoint source discharges that pollute state waters or result in water quality violations.

- Under Nebraska's Environmental Protection Act, it is unlawful to "cause pollution of any...waters...of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution" of any waters of the state.¹ Waste is defined as "sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land or waters of the state."²

- It is unlawful to violate any water quality standards, any permit or license condition, any order, or any rule or regulation adopted under the state Environmental Protection Act.³

- The law also declares it unlawful and a public nuisance to "discharge or emit any wastes into any...waters...of the state which reduce the quality of such...waters" below water quality standards.⁴ (This section further provides that a livestock operation is not a nuisance if it is in compliance with applicable regulations and zoning regulations, and if the nuisance action is brought by a private person whose ownership or possession of land allegedly affected by the nuisance was subsequent to (a) the issuance of an appropriate permit for the livestock operation or (b) when operation of the feedlot began and an inspection by the department revealed that no permit was required.⁵)

Enforcement of these water pollution control provisions is through corrective action orders, injunctions, civil penalties up to \$10,000 per day, and criminal (felony and misdemeanor) prosecution. The state may recover damages for restocking the waters with fish or replenishing wildlife.⁶

Other Discharge Limitations

- In addition to the above nuisance provision, Nebraska law provides that the "corrupting or rendering unwholesome or impure of any watercourse, stream, or water, or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others," shall be deemed nuisances.⁷ Maintenance of a nuisance is a class III misdemeanor, and courts "shall order every such nuisance to be abated or removed."⁸

- Under Nebraska's Groundwater Management and Protection Act, each natural resources district is required to prepare a groundwater management plan, which must include information on groundwater supplies, crop water needs, groundwater quality concerns, etc. The groundwater management plan must be approved by the director of water resources.⁹ If a district determines from the groundwater management plan that a "management area" should be established to protect groundwater supplies, it shall by order designate the management area and adopt one or more of the controls authorized by the law, which include best management practices.¹⁰

Each state agency and political subdivision is directed to report promptly to the department of environmental quality any information which indicates that groundwater contamination is occurring.¹¹ After being informed that contamination is occurring, the department must study the problem. Upon determining that contamination is coming from a point source, the director "shall expeditiously use the procedures authorized ... to stabilize or reduce the level and prevent the increase or spread of such contamination."¹²

If the director of environmental quality determines from a study that one or more sources of contamination are not point sources, and if a management area has been designated covering that affected area, the director shall consider whether to require the natural resources district to adopt an "action plan." If there is no management area covering the contaminated area, the director shall hold hearings and determine whether to designate a management area and prepare an action plan.¹³ If the director determines an action plan is necessary, the district shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of groundwater contamination, and shall include any of the controls authorized by law, including best management practices.¹⁴ If the district fails to adopt an action plan in a specific time, the power to specify the controls authorized by law is vested in the director of environmental quality, along with enforcement authority.¹⁵

Enforcement of the Groundwater Management and Protection Act by natural resources districts is primarily through cease and desist orders, which may be enforced judicially. Any violation of a cease and desist order issued by a district is a Class IV misdemeanor.¹⁶

Fish/Fisheries Laws

- Nebraska's game and parks code contains fisheries provisions that may relate to nonpoint source pollution. The code provides that it is unlawful to "dump or drain any refuse from any factory, slaughterhouse, gas plant, garage, repair shop, or other place whatsoever or any refuse, junk, dross, litter, trash, lumber, or leavings into or near any of the waters of this state or into any bayou, drain, ditch, or sewer which discharges such refuse or an part thereof into any of the waters of this state. It shall be unlawful to place, leave, or permit to escape any such refuse in such manner that it or any part of it is through the action of the elements or otherwise carried into any of the waters of this state."¹⁷ Refuse is defined to include "oils, tars, creosote, blood, offal, decayed matter, and all other substances which are injurious to aquatic life."¹⁸

- It is also unlawful to "place the carcass of any dead animal, fish, or fowl in or near" waters of the state or to "leave such carcass where the whole or any part thereof may be washed or carried into" waters of the state.¹⁹

- Finally, it is unlawful to "place, run, or drain any matter harmful to fish into any of the waters of this state that have been stocked by the [Game and Parks] commission."²⁰

Enforcement of these provisions is through criminal (Class II or IV misdemeanor) prosecution.

OPERATIONAL REQUIREMENTS

Forestry Requirements

The state's Erosion and Sediment Control Act, described in the following section, may be applicable to forestry activities to control soil loss.²¹

Agriculture Requirements

- Each natural resources district in the state is required under the Erosion and Sediment Control Act to adopt a program for implementing the state erosion and sediment control program. The district program must include (1) soil-loss limits for the various types of soils, which are to be adopted and promulgated as rules and regulations and which must be at least as stringent as those adopted by the state director of natural resources; (2) recommended erosion or sediment control practices; and (3) programs, procedures, and methods to implement the program.²²

The Act also delegates authority to municipalities and counties to adopt rules governing erosion and sediment control that are in substantial conformance with the state erosion and sediment control program.²³ In such cases, the municipality or county may assume jurisdiction to enforce applicable soil-loss limits.

Any person who has a farm unit conservation plan approved by the district and is implementing it in strict compliance, or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss limit is deemed to be in compliance with the Erosion and Sediment Control Act. Except for cases where erosion occurs on the site of any nonagricultural land-disturbing activity, a landowner will not be required to conform his practices to the applicable soil-loss limit or will not be required to implement the soil and water conservation practices in the plan unless and until there is made available to the landowner at least 90 percent cost-sharing assistance.²⁴

Where there are violations of a district's soil-loss limits, the district may reach an agreement with the owner for eliminating excessive erosion, which agreement is enforceable in district court. The district may also, following a hearing, issue administrative orders. In the case of agriculture, silviculture or horticulture activities, the administrative order is to direct the owner to conform to the applicable soil-loss limit. For "non-agriculture" activities, the administrative order may authorize the

owner to either conform to the soil-loss limits or prevent the sediment caused by excessive erosion from leaving the land.²⁵ The order may specify alternative soil and water conservation practices or erosion or sediment control practices that may be used.²⁶ The district court issues an order directing the owner to comply with the district's administrative order, and any person who fails to comply with the court order is deemed in contempt of court and punished accordingly.²⁷

- While the Department of Environmental Quality is responsible for adopting standards for pesticides in surface and groundwater, the Department of Agriculture is charged with developing and implementing a state management plan for the prevention, evaluation, and mitigation of occurrences of pesticides or pesticide breakdown products in ground water and surface water. The Department of Agriculture is authorized to promulgate regulations specifying methods to be used in the application of pesticides, including time, place, manner, methods, materials, amounts, and concentrations, and may restrict or prohibit the use of pesticides in designated areas. The regulations "shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication" to plants, wildlife, fish and other aquatic life, surface and groundwater and humans.²⁸

Nebraska law further provides that it is unlawful to use a pesticide contrary to the labeling or to a rule of the department limiting its use. It is also unlawful to "dispose of, discard or store a pesticide...in a manner that the person knows or should know is...likely to cause injury to humans, the environment, vegetation, crops, livestock, wildlife or pollinating insects...(or) likely to pollute a water supply or waterway..."²⁹

Enforcement of the Pesticide Act is through administrative cease and desist orders, license revocation, administrative fines of up to \$5,000, injunctions, civil fines of not more than \$15,000, and criminal (misdemeanor) prosecution.³⁰

- A permit is required for anyone who applies chemicals to land or crops through the use of chemigation. An application for a permit is approved if the irrigation distribution system complies with the statutory requirements and the applicator has been certified.³¹ Enforcement is through criminal (misdemeanor) prosecution, civil penalties of up to \$1,000, and injunctions.³²

- "In order to conserve groundwater supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation."³³ Each district is directed to adopt regulations prescribing: standards for what constitutes the improper runoff of groundwater used in irrigation; procedures to prevent, control, and abate such runoff; remedial measures to prevent, control or abate runoff; and enforcement procedures.³⁴ Enforcement is through cease and desist orders issued by the district.³⁵

Development and Other Earth-Disturbing Activities

- The Erosion and Sediment Control Act discussed above applies to non-agricultural, land-disturbing activities, though the Act excludes residential, commercial and industrial construction involving less than two acres.³⁶

Endnotes

- ¹ Nebraska Revised Statutes 81-1506(a).
- ² NRS 81-1502(14).
- ³ NRS 81-1508.02.
- ⁴ NRS81-1506(b).
- ⁵ NRS 81-1506(b).
- ⁶ NRS 81-1508(1), 81-1508.01(1), 81-1508.02.
- ⁷ NRS 28-1321.
- ⁸ NRS 28-1321(4), (5).
- ⁹ NRS 46-656.12.
- ¹⁰ NRS 46-656.20, 46-656.25.
- ¹¹ NRS 46-656.35.
- ¹² NRS 46-656.36-37.
- ¹³ NRS 46-656.38 -- 46-656.62.
- ¹⁴ NRS 46-656.40 -- 46-656.42.
- ¹⁵ NRS 46-656.45.
- ¹⁶ NRS 46-656.08, 656.10
- ¹⁷ NRS 37-555.
- ¹⁸ NRS 37-555.
- ¹⁹ NRS 37-556.
- ²⁰ NRS 37-558.
- ²¹ *See* NRS 4603(7).
- ²² NRS 2-4605.
- ²³ NRS 2-4606.
- ²⁴ NRS 2-4610(1),(2).
- ²⁵ NRS 2-4608(2).
- ²⁶ NRS 2-4608(3).
- ²⁷ NRS 2-4613.
- ²⁸ NRS 2-2626.
- ²⁹ NRS 2-2645.
- ³⁰ NRS 2-2626(6)-(8), 2-2647, 2-2648.
- ³¹ NRS 46-117.
- ³² NRS 46-1127, 46-1139, 46-1143.
- ³³ NRS 46-656.11(1).
- ³⁴ NRS 46-656.11(2).
- ³⁵ NRS 46-656.11(3).
- ³⁶ NRS 2-4603(7).