

NEVADA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Nevada's water pollution control law includes some provisions that may be used to take enforcement action against some nonpoint source discharges that pollute the waters of the state.

- Nevada's water pollution control act ("Act") allows the state environmental commission ("commission") to prescribe controls for those "diffuse sources" (equivalent to nonpoint sources)¹ existing on January 1, 1979 that are "significantly causing or adding to water pollution in violation of a water quality standard."²

- The commission also may prescribe controls for new diffuse sources to prevent degradation of high quality waters,³ except with respect to "normal agricultural rotation, improvement or farming practices."⁴ The Act further provides that new or increased diffuse sources must provide measures that are designed to prevent, eliminate or reduce water pollution from the source and are reasonably consistent with the economic capability of the project or development.⁵

The Act directs the commission to delegate administration of the diffuse sources program to counties and cities that request it and have sufficient resources.⁶ For violations involving diffuse sources, an administrative order prescribing corrective actions can be issued or a civil action can be brought with the court ordering injunctive relief or posting of a bond or other security, but no civil or criminal penalty is authorized.⁷

- Special regulations exist to protect the Lake Tahoe watershed. The Act makes it illegal to discharge waste within 100 feet of the lake or a stream or other water supply in the Lake Tahoe watershed.⁸

Other Discharge Limitations

- The county and city boards of health are authorized to define and abate nuisances.⁹

- Nevada law creates a cause of action for damages against any person who maintains, dumps, turns or flows "anything of a liquid nature poisonous or injurious to...livestock, into an open ditch...pond, reservoir or any other place," unless the livestock are fenced out of the affected water body.¹⁰

Fish/Fisheries Laws

- Any person who places in or allows to fall into waters of the state "any substance deleterious to fish or wildlife" is guilty of a misdemeanor for the first offense

and gross misdemeanor for a subsequent offense.¹¹ Misdemeanor convictions that are punishable by fines (\$50 to \$500) and/or imprisonment (six months or less).¹² Conviction of the unlawful killing of a mammal, bird or fish results in additional civil penalties.¹³ A court may also revoke or suspend wildlife-related licenses,¹⁴ and licenses may be suspended administratively after conviction, based on a point system reflecting the severity of the offense.¹⁵

OPERATIONAL REQUIREMENTS

Forestry Requirements

- The Nevada forestry statute requires a permit from the state forester firewarden for logging or cutting operations, which may be denied if the operation will cause significant soil erosion and siltation.¹⁶ The forestry statute also requires a certificate before the conversion of timberland "to any use other than the growing of timber,"¹⁷ which the firewarden may deny for, among other reasons, failure to give satisfactory proof that adequate provision will be made "to stabilize, revegetate or rehabilitate disturbed soils in order to minimize erosion, flooding or other damage to the watershed."¹⁸ According to rules promulgated under the Act, all logging permits and timberland conversion certificates must require the use of best management practices to prevent, eliminate or reduce water pollution from diffuse sources.¹⁹ A violation of permit conditions or forest practice rules can result in administrative suspension or revocation of any logging permit;²⁰ and lack of compliance with timberland conversion certificate may also result in administrative suspension or revocation.²¹ Violation of these provisions is a misdemeanor punishable with a fine (up to \$1000) and/or imprisonment (six months or less).²²

- The Nevada forestry statute provides for variances for certain otherwise prohibited forestry activities. Nevada law prohibits "felling of trees, skidding, rigging or construction of roads...within 200 feet of a waterbody"²³ without a variance, which may be granted if, among other standards, the goal of maintaining water quality standards will not be compromised.²⁴ It is illegal to engage in tractor logging on slopes of 30 percent or more without a variance, and, in deciding whether to grant and/or what conditions to the variance, the firewarden must consider displacement and erosion of soils and siltation of streams.²⁵ The enforcement provisions and sanctions are noted above.

- The forestry statute also requires tractor skid trails, landings, logging truck roads and firebreaks to be located, constructed, used and left so as to not "appreciably diminish the quality of the water"²⁶ and includes standards that require that the waterbreak and culvert system on all tractor skid trails, landings, logging truck roads and firebreaks be designed so as to prevent degradation of water quality.²⁷

Agriculture Requirements

- A "diffuse source" as described above includes "agricultural activity" and "return flows from irrigation."²⁸ The enforceable mechanisms are also described above.

- A conservation district may petition the state conservation commission to formulate land use regulations that may include provisions that prevent soil erosion and sedimentation.²⁹ Variances from these provisions may be available from a board of adjustment set up by the commission.³⁰ The commission may request a court to enforce the land use regulations³¹ or authorize a land occupier to recover damages from another occupier for a violation.³² A court may order a defendant to bring the land into compliance or allow the commission to perform the work and recover the costs.³³

- Nevada law prohibits grazing in areas into which water is diverted for municipal, drinking or domestic purposes in the state, with some exceptions including prospectors or other persons with ten head of livestock passing over or being temporarily upon such lands, livestock running at large upon the range and persons herding on their own lands.³⁴ Violation of this provision is a misdemeanor, and each day constitutes a separate violation.³⁵

- Nevada regulates pesticides and certifies pesticide applicators.³⁶

Development and Other Earth-Disturbing Activities

- State law empowers local governments to regulate land improvements and location of structures and to take into account the potential impairment of natural resources.³⁷ Also zoning regulations must be designed to preserve the quality of water resources.³⁸ Nevada law broadly provides for the state land use planning agency to assist local governments in planning for "areas of critical environmental concern"³⁹ and requires preparation of regional land use plans that include goals relating to conservation and protection of water and other natural resources.⁴⁰

- Also see "diffuse sources." Nevada regulations provide for permits to construct or grade, which "must require that practices be used to prevent, eliminate or reduce water pollution from any diffuse source during the activity."⁴¹

Endnotes

¹ NRS 445A.335.

² NRS 445A.570(1)(a).

³ NRS 445A.570(1)(b).

⁴ NRS 445A.565(1).

⁵ NRS 445A.565(2)(b).

⁶ NRS 445A.570(2).

⁷ NRS 445A.680, 445A.695.

⁸ NRS 445A.170-190.

⁹ NRS 439.360, 439.470, 269.205, 266.335.

¹⁰ NRS 575.040.

¹¹ NRS 503.430.

¹² NRS 501.385.

¹³ NRS 501.3855(2).

¹⁴ NRS 501.387.

¹⁵ NRS 501.1814-.1818.

¹⁶ NRS 528.042, 528.044(1)(b)(4).

¹⁷ NRS 528.082-.090.

- ¹⁸ NRS 528.084(2)(d).
- ¹⁹ NAC 445A.340.
- ²⁰ NRS 528.047.
- ²¹ NRS 528.088.
- ²² NRS 528.090, 193.150.
- ²³ NRS 528.053(1).
- ²⁴ NRS 528.053(2).
- ²⁵ NRS 528.048(2), (3)
- ²⁶ NRS 528.055.
- ²⁷ NRS 528.0551.
- ²⁸ NAC 445A.309.
- ²⁹ NRS 548.410.
- ³⁰ NRS 548.505(7).
- ³¹ NRS 548.445.
- ³² NRS 548.440(2).
- ³³ NRS 548.450(3).
- ³⁴ NRS 568.330.
- ³⁵ NRS 568.330(3) & (4).
- ³⁶ NRS 586.010 et seq.
- ³⁷ NRS 278.020.
- ³⁸ NRS 278.250(2).
- ³⁹ NRS 321.640-770.
- ⁴⁰ NRS 278.0274(2).
- ⁴¹ NAC 445A.339.