NORTH DAKOTA
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

North Dakota’s water pollution control law includes a provision that may be used to take enforcement action against nonpoint sources that pollute the waters of the state. Another provision may allow enforcement action against certain unpermitted nonpoint source activities that cause pollution.

- North Dakota’s Water Pollution Act empowers the state Department of Health ("Department") generally to prevent "new or existing pollution of waters of the state" and, in cooperation with the state water commission, to formulate water quality standards. More specifically, North Dakota law makes it 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 the waters of the state." This provision is not restricted to point sources nor to "discharges."

- State law also requires a permit for a range of activities and facilities that would cause a "discharge" or "would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized." Although the term "discharge" is defined as limited to discharge from a point source, the remaining language may allow the state to apply this provision to some nonpoint sources that cause pollution.

Enforcement provisions authorize the Department to initiate court action, administrative enforcement proceedings, issue emergency orders or seek emergency injunctions. Fines of up to $25,000 for the first and $50,000 for subsequent convictions for willful violations and/or jail terms of one or two years are available. Civil penalties of up to $10,000 per day are also available for violations without willful intent.

Other Discharge Limitations

- State law establishes water resource districts that are empowered, among other acts, "to make rules and regulations concerning the management, control, regulations, and conservation of waters and prevent the pollution, contamination, or other misuse of water resources, streams, or bodies of water included within the district" and, also, to protect native woodland bordering within two hundred feet of a riverbank subject to overflow flooding by ordering or taking "appropriate legal action" (civil suits and administrative orders) to halt its destruction or ordering "appropriate planting of a shelterbelt." Violation of these provisions constitutes a Class B misdemeanor, which means up to 30 days in jail and a $500 fine.

- Municipalities have the authority "to prevent the pollution" of a municipal or public water supply within one mile of the municipal limits and "to compel cleaning,
abatement or removal of...any other unwholesome nauseous thing..." Municipalities may order abatement of violations and seek fines and penalties as set by ordinance.

- Under North Dakota law, "nuisance" is defined as an act that interferes with or obstructs "a lake, navigable river, bay, stream, canal, basin..." However, this statute protects an agricultural operation from a nuisance action if it has been in operation for more than one year and was not a nuisance at the time the operation began, except where there is negligence or improper operation. Any action taken under "the express authority of a statute" cannot be deemed a nuisance. A range of actions on behalf of the state are possible to abate a nuisance, including actions brought by the attorney general, the state health officer, local boards of health, state’s attorney or any citizen of the county where a nuisance exists. A private nuisance may be abated by a public body or officer and is actionable by a private person to whom the nuisance is "specially injurious." Sanctions include an action for abatement and/or past damages and, for public nuisances, criminal sanctions of up to one year in prison and a $1000 fine.

- Municipalities have their own power to determine what constitutes a nuisance and "to prevent, abate and remove the same."

**Fish/Fisheries Laws**

- State law prohibits the "deposit [of] any refuse or other matter which may prove harmful to fish or fish eggs," in waters in which the state or federal government "has deposited or may deposit, fish, fish eggs, or fry, or in which fish naturally abound..." These are considered criminal actions that are Class B misdemeanors punishable by a maximum of 30 days in jail and a $500 fine.

**OPERATIONAL REQUIREMENTS**

**Forestry Requirements**

North Dakota does not appear to have laws relating to forestry that contain enforceable provisions with respect to nonpoint source discharges, apart from the water resource district law described above.

**Agriculture Requirements**

- North Dakota law provides for the creation of soil conservation districts to prevent and control soil erosion through the formulation of land use regulations. These districts may set up boards that grant variances from the regulations and that are also authorized to bring enforcement actions for violations that increase erosion. In the absence of compliance, the court may empower the district to enter upon the land, force compliance and assess costs and interest.

- The water quality regulations require the Department’s approval of concentrated livestock feeding operations. The Department enforces these provisions as part of the water pollution program. See enforcement mechanisms outlined supra under the general discharge limitations section.
The Commissioner of Agriculture ("Commissioner") is charged with enforcement of the state pesticide laws. The Commissioner is authorized to develop pollution prevention criteria for areas utilized for mixing and storing agricultural chemicals at the retail and end use levels.\(^\text{105}\) In addition, the state pesticide law makes it illegal to discard, store, display or dispose of pesticide "in such a manner as to endanger the environment."\(^\text{106}\) The Commissioner may seek civil action, issue an administrative order or file a criminal complaint if the administrative order is ignored.\(^\text{107}\)

State law directs the Commissioner to adopt rules "to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation water supply,"\(^\text{108}\) and may issue an administrative order for compliance or seek relief in court.\(^\text{109}\) The statute provides for civil penalties of up to $5000 or, for criminal proceedings, a fine of up to $1000 of a year in jail.\(^\text{110}\) A violation also constitutes a Class A misdemeanor.\(^\text{111}\)

### Development and Other Earth-Disturbing Activities

North Dakota statutes contain general language delegating various zoning authorities to cities and counties. Counties are authorized to regulate property development through zoning regulations that are designed to promote certain purposes, including "to conserve and develop natural resources"\(^\text{112}\) a violation of which is a Class B misdemeanor. Local authorities determine the "means and methods" for enforcement of zoning ordinances,\(^\text{113}\) and affected property owners may seek civil enforcement of township regulations.\(^\text{114}\)

No specific enforcement requirements relating to earthmoving or construction activities were identified, apart from any that may implement urban stormwater programs under the Clean Water Act.

### Endnotes

82 N.D. Cent. Code 61-28-04(2) & (15).
83 N.D. Cent. Code 61-28-06(1).
84 N.D. Cent. Code 61-28-06(2).
85 N.D. Cent Code 61-28-02(3).
87 N.D. Cent. Code 61-28-08.
88 N.D. Cent. Code 61-16.1-09(8).
89 N.D. Cent. Code 61-16.1-09(17).
91 N.D. Cent. Code 40-05-01(49), (61).
93 N.D. Cent. Code 42-04-02.
94 N.D. Cent. Code 42-01-12.
96 N.D. Cent. Code 42-01-09.
97 N.D. Cent. Code 42-01-03 & 42-01-11.
100 N.D. Cent. Code 20.1-06-09.
N.D. Cent. Code 4-22-27.
N.D. Cent. Code 4-22-35 to 39.
N.D. Admin. Code 33-16-03.
N.D. Cent. Code 23-33-09.
N.D. Cent. Code 4-35-24(1) - (3).
N.D. Cent. Code 4-35.1-03.
N.D. Cent. Code 4-35.1-06.
N.D. Cent. Code 4-35.1-06.
N.D. Cent Code 11-33-03(5).
N.D. Cent. Code 40-47-01.