

OHIO

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Ohio has a broad prohibition that prohibits nonpoint source water pollution as well as point source water pollution. However, it has exemptions that are intended to assure that certain nonpoint source discharges regulated under other state laws are not subject to this section. It also exempts nonpoint source animal waste discharges.

- "No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location *where they cause pollution* of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof...or an application for renewal is pending."¹ The prohibition is enforced by administrative orders, injunctions, and civil penalties of up to \$10,000 per day.² However, this prohibition exempts "[a]pplication of materials to land for agricultural purposes or runoff of such materials from such application[,] or pollution by animal waste or soil sediment including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307 or 1515 of the Revised Code."³ The referenced sections are laws under which Ohio counties regulate earthmoving associated with development, and under which soil and water conservation districts regulate nonpoint source discharges of sediment as described below. The broad prohibition also does not apply to excrement of domestic and farm animals and runoff therefrom.⁴

Other Discharge Limitations

- Ohio has multiple provisions in its general nuisance laws applicable to nonpoint source pollution.⁵ The water pollution law expressly preserves common law nuisance remedies for water pollution.⁶ Local governments also have inherent power to abate nuisances.⁷ However, Ohio law provides that complaints regarding agricultural nuisances may only be made to the chief of the Department of Natural Resources' Soil and Water Conservation Division, so that they may be investigated by the division.⁸ In a private civil action for a nuisance involving agricultural pollution it is an affirmative defense that the defendant is operating under a management plan approved by the division.⁹

State law also defines the following offenses:

- "No person, regardless of intent, shall deposit litter or cause litter to be deposited on any public property, or private property not owned by him or in or on waters of the state..."¹⁰ "Litter" means "garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boses, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature."¹¹ This provision is enforceable by any sheriff,

police officer, constable, wildlife officer, conservancy district officer or any other law enforcement officer.¹² Forest officers are specifically directed to enforce this provision "in or along any water course within, abutting, or upstream of any area administered by" the Department of Natural Resources.¹³ This is a misdemeanor of the third degree (no more than 60 days and/or \$500). The court may also impose restitution for all or part of any property damage. And the court may, in lieu of or in addition to any penalty, require such person to "remove litter from any public or private property, or in or on waters of the state."¹⁴

- "No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public."¹⁵ The law exempts persons engaged in agriculture provided they are operating outside the city limits of a municipal corporation and "in such manner so as not to have a substantial effect on the public health, safety or welfare." This exemption also applies to "any similar ordinances, resolutions, rules, or other enactments of a state agency or political subdivision"¹⁶ This offense is a misdemeanor of the third degree (no more than 60 days and/or \$500); The court may also impose restitution for all or part of any property damage.¹⁷

- "No person shall....corrupt or render unwholesome or impure, a watercourse, stream, or water."¹⁸ This is a misdemeanor of the third degree (no more than 60 days and/or \$500); the court may also impose restitution for all or part of any property damage.¹⁹

- "No person shall intentionally throw, deposit, or permit to be thrown or deposited [various wastes associated with coal and coal products, cheesemaking, and petroleum handling]" either into water "or a place from which it may wash therein."²⁰ This is a misdemeanor of the first degree (no more than 6 months and/or \$1,000); the court may also impose restitution for all or part of any property damage.²¹

- "No person shall put the carcass of a dead animal, or the offal from a slaughterhouse, butcher's establishment, packing house, or fish house, or spoiled meat, spoiled fish, or other putrid substance or the contents of a privy vault" into the waters or lands where it may enter the water.²² "No person shall maliciously put a dead animal, carcass, or part thereof, or other putrid, nauseous, or offensive substance into, or befoul, a well, spring, brook, or branch of running water, or a reservoir of a water works, of which use is or may be made for domestic purposes."²³ These offenses are minor misdemeanors punishable by up to \$100 fine; the court may also impose restitution for all or part of any property damage.²⁴

Fish/Fisheries Laws

- Ohio's wildlife law contains a provision stating that "No person shall place or dispose of in any manner, any garbage, waste, peelings of vegetables or fruits, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, parts of automobiles, wagons, furniture, glass, oil, or anything else of an unsightly or unsanitary nature...in any ditch stream, river, lake, pond, or other water course...or upon the bank thereof where the same is liable to be washed into the water either by ordinary flow or floods."²⁵ However, this provision does not apply to substances placed in accordance with a permit under the

water pollution control provision referenced above "or exempted by such section" -- hence exempting runoff of waste or sediment from agriculture, silviculture, and earthmoving where otherwise regulated, and exempting animal manure generally. The wildlife law prohibition is enforced in local courts as a misdemeanor by wildlife officers or local law enforcement officials.²⁶ The first offense is punishable by no more than 60 days and/or \$500 fine; subsequent offenses by no more than 6 months and/or \$1,000 fine.²⁷ The court may also impose restitution for all or part of any property damage.

OPERATIONAL REQUIREMENTS

Forestry and Agriculture Requirements

- Ohio law specifically provides a program for control of sediment and related runoff from agricultural and silvicultural activities. The law directs Ohio DNR's Division of Soil and Water Conservation, with the approval of the Soil and Water Conservation Commission, to adopt rules establishing "technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming or silvicultural operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by animal waste or by soil sediment including substances attached thereto."²⁸ The law further empowers the Division to "establish procedures for...enforcement of rules for agricultural pollution abatement."²⁹ The law is implemented at the farm and forest level by soil and water conservation districts.³⁰

The regulations under this program provide for control of sheet and rill erosion, wind erosion, and concentrated channel erosion.³¹ Farmers are required to apply and maintain "Field Office Technical Guide" measures.³² The regulations specifically provide that there shall be no earth disturbing practices (including tillage) immediately adjacent to waters of the state "except for those practices constructed or implemented in accordance with generally accepted agricultural, silvicultural and engineering practices."³³ The regulations make Best Management Practices enforceable, and provide that operation and maintenance plans "may" be filed with county soil and water conservation districts.³⁴ The districts must approve operations and management plans.³⁵

The statute expressly does not regulate the excrement of domestic or farm animals or runoff therefrom into the waters of the state, however, except from concentrated animal feeding operations (CAFOs).³⁶ With respect to CAFOs the regulations provide that to abate pollution by animal waste from collection, storage, or treatment facilities, the operator shall "design, construct, operate, and maintain" such facilities to prevent discharge, and follow the standards in the "Field Office Technical Guide."³⁷ The operator must prevent seepage from animal waste management facilities and "if pollution of waters of the state occurs from an existing facility, corrective measures shall be taken."³⁸ CAFO pollution from land application, flooding, waste waters, and other related activities must also be prevented.³⁹

If the sediment and erosion control program is being administered by the local soil and water conservation district, complaints may be investigated by the district and - after the district invites the violator to comply, provides any assistance, and gives a

voluntary period to correct the problem⁴⁰ -- orders may be issued by the Division based on the district's findings of violation, subject to an administrative hearing.⁴¹ The Division of Soil and Water Conservation may order compliance with an operation and maintenance plan, after conducting an adjudicatory hearing.⁴² However, the Division may not issue an order requiring the recipient to implement a pollution abatement practice eligible for cost sharing unless public funds are actually available at not less than 75 percent of the cost (not to exceed \$15,000/person/yr).⁴³ Division enforcement orders are appealable to the court of common pleas.⁴⁴ The orders are also judicially enforceable.⁴⁵ Violation of an order is a misdemeanor punishable by imprisonment up to 6 months, up to \$1,000 per day, and restitution.⁴⁶ Also the state may recover any expenditures from the "agricultural pollution abatement fund" for expenditures to protect public health.⁴⁷ In addition, the Division may seek a court order against a discharger at any time if the violation "causes pollution of the waters of the state and constitutes a danger to public health."⁴⁸

- Ohio law provides for pesticide regulation, including custom applicator licensing, public operator licensing, and private applicator certification.⁴⁹ It sets out prohibitions including uses inconsistent with labeling "or other restrictions imposed by the director of agriculture."⁵⁰ It also provides that "no person shall transport, store, dispose of, display, or distribute any pesticide or pesticide container in such manner as to have unreasonable adverse effects on the environment."⁵¹ Enforcement includes misdemeanor prosecution, and injunction, as well as civil penalties not to exceed \$5,000 for a first offense and \$10,000 for any subsequent offense.⁵²

Although Ohio has numerous laws relating to agricultural ditching and drainage, none speaks directly to the issue of preventing or controlling nonpoint source water pollution.⁵³

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 also provides the following authorities applicable to nonpoint source discharges.

- State law empowers the Division of Soil and Water Conservation, subject to approval of the Ohio Soil and Water Conservation Commission, to adopt rules for "technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes."⁵⁴ Municipalities and counties may develop their own programs. The division "may recommend" criteria and procedures for "approval of urban sediment pollution abatement plans and issuance of permits" prior to the disturbance of five or more acres; while areas less than five acres do not need plans or permits, they are not exempt from the "other provisions of this chapter and rules adopted under them."⁵⁵ Developments of five or more acres must develop an "erosion and sediment control plan" which must be approved by the state or local approving agency, and must

institute stormwater controls.⁵⁶ Areas of any size require use of conservation practices including sediment trapping, stabilization of denuded areas, stream crossing work; no dumping into water resources or into such proximity that it may slough, slip, or erode into the waters unless authorized.⁵⁷

- Coastal erosion areas are designated for Lake Erie jurisdictions by DNR. Rules govern "erection, construction, and redevelopment" of structures in these erosion areas; a permit is required and may be granted only if "the proposed site is protected by an effective erosion control measure approved by the director."⁵⁸ Enforcement mechanisms include stop work orders, injunctions, fines, and civil penalties of up to \$5,000.⁵⁹ A state permit is not required if the county or municipality has its own equivalent program.

Endnotes

1. Ohio Rev. Stat. § 6111.04.
2. Ohio Rev. Stat. §§ 6111.06, 6111.07, 6111.08.
3. Ohio Rev. Stat. § 6111.04(C).
4. Ohio Rev. Stat. § 6111.04(D).
5. Ohio Rev. Stat. Chapter 3767.
6. Ohio Rev. Stat. § 6111.08: "Chapter 6111 of the Revised Code [Water Pollution] does not abridge any rights of action or remedies in equity or under the common law, nor does such chapter, or any act done under such chapter, estop the state or any municipal corporation or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law to suppress nuisances or to abate pollution."
7. See e.g., Ohio Rev. Stat. § 715.44 (municipalities).
8. Ohio Rev. Stat. § 1511.021(B).
9. Ohio Rev. Stat. § 1511.021(c).
10. Ohio Rev. Stat. § 3767.32(A).
11. Ohio Rev. Stat. § 3767.32(D).
12. Ohio Rev. Stat. § 3767.32(E).
13. Ohio Rev. Stat. § 1503.29.
14. Ohio Rev. Stat. § 3767(C); § 2929.21(E).
15. Ohio Rev. Stat. § 3767.13(B).
16. Ohio Rev. Stat. § 3767.13(D).
17. Ohio Rev. Stat. §§ 3767.13, 2929.21(E).
18. Ohio Rev. Stat. § 3767.13(C).
19. Ohio Rev. Stat. §§ 3767.13, 2929.21(E).
20. Ohio Rev. Stat. § 3767.14.
21. Ohio Rev. Stat. § 2929.21(E).
22. Ohio Rev. Stat. § 3767.16.
23. Ohio Rev. Stat. § 3767.18.
24. Ohio Rev. Stat. § 2929.21(E).
25. Ohio Rev. Stat. § 1531.29.
26. Ohio Rev. Stat. § 1531.131.
27. Ohio Rev. Stat. § 1531.99; see § 2929.21.
28. Ohio Rev. Stat. § 1511.02(E)(1).
29. Ohio Rev. Stat. § 1511.02(E)(2).
30. Ohio Rev. Stat. §§ 1515.08(L),(R),(S),(T) provide for soil and water conservation districts to agree to carry out the program under Chapter 1511.
31. Ohio Admin. Code §§ 1501:15-5-08, -09, -10.

32. Ohio Admin. Code § 1501:15-5-08.
33. Ohio Admin. Code § 1501:15-5-11.
34. Ohio Admin. Code § 1501:15-5-12.
35. Ohio Admin. Code § 1501:15-5-15.
36. Ohio Rev. Stat. § 1511.02.
37. Ohio Admin. Code § 1501:15-5-02.
38. Ohio Admin. Code § 1501:15-5-03.
39. Ohio Admin. Code §§ 1501:15-5-04 to -07.
40. Ohio Admin. Code § 1501:15-5-15.
41. Ohio Admin. Code § 1501:15-5-16.
42. Ohio Rev. Stat. § 1511.02(G).
43. Ohio Rev. Stat. § 1511.02(H).
44. Ohio Rev. Stat. § 1511.08.
45. Ohio Rev. Stat. § 1511.07(B).
46. Ohio Rev. Stat. § 1511.99; Ohio Admin. Code § 1501:15-5-16(A)(2).
47. Ohio Rev. Stat. § 1511.071.
48. Ohio Rev. Stat. § 1511.07(A)(2).
49. Ohio Rev. Stat. Chap. 921.
50. Ohio Rev. Stat. § 921.25.
51. Ohio Rev. Stat. § 921.15.
52. Ohio Rev. Stat. §§ 921.26, 921.99; Ohio Admin. Code § 901:5-11-11.
53. See e.g., Ohio Rev. Stat. Chaps. 6131, 6135, 6137.
54. Ohio Rev. Stat. § 1511.02(E)(2).
55. Ohio Rev. Stat. § 1511.02(E)(3).
56. Ohio Admin. Code § 1501:15-1-03, § 1501:15-1-05.
57. Ohio Admin. Code § 1501:15-1-04.
58. Ohio Rev. Stat. § 1506.07.
59. Ohio Rev. Stat. §§ 1506.07, .08, .99.