OKLAHOMA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Oklahoma’s water pollution control law contains a general prohibition against water pollution or placement of wastes that are likely to cause pollution. This prohibition has been construed by regulation to apply to nonpoint sources and to be enforceable by the state’s Department of Environmental Quality (DEQ). However, Oklahoma law also removes agricultural and silvicultural nonpoint sources from the DEQ’s jurisdiction, and places them under voluntary or cost-share programs.

- The water quality code makes it "unlawful for any person 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 air, land or waters of the state," and declares any such action to be a public nuisance. This provision is expressly construed by regulations to include nonpoint sources. The regulations also expressly state that nonpoint sources of pollution are to be investigated and enforced as in other cases of pollution. Generally, in water pollution cases, the Executive Director of the Department of Environmental Quality "shall make an order requiring such pollution to cease within a reasonable time, or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in his judgment be necessary to prevent further pollution. It shall be the duty of the person to whom such order is directed to fully comply with the order of the Executive Director." In cases of noncompliance, the Department may institute an action in the proper court, and seek an injunction, a civil penalty of up to $10,000 per violation, and/or misdemeanor criminal penalties of $200 to $10,000, imprisonment for up to 6 months, or both.

However, Oklahoma law divests the DEQ of jurisdiction over agricultural and silvicultural nonpoint sources, instead assigning jurisdiction to the Department of Agriculture for agricultural discharges and to the Conservation Commission for erosion control. Neither of these entities appears to have enforcement authorities applicable to nonpoint source discharges.

Other Discharge Limitations

- The Oklahoma code provides that "a nuisance consists in unlawfully doing an act ... which either: (1) [a]nnoys, injures or endangers the comfort, repose, health, or safety of others; or (2) [o]ffends decency; or (3) [u]nlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway; or (4) [i]n any way renders other persons insecure in life, or in the use of property, provided, this section shall not apply to preexisting agricultural activities." It also states that "a public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal." The statutory definition of "nuisance"
has been held to encompass both private and public nuisances in the context of a water pollution case. However, prior existing agricultural activities are presumed reasonable and not a nuisance unless they have "substantial adverse effects." Remedies against public nuisance include indictment or information, civil actions, or abatement. A "private person may maintain civil action for a public nuisance if it is specially injurious to himself." Public nuisances also are subject to abatement by "any public body or officer," or by the person injured. Public nuisance also is a misdemeanor offense where penalties are not otherwise prescribed. While most Oklahoma nuisance cases dealing with water pollution stem from petroleum industry operations, there are cases finding liability for discharge of improperly treated municipal sewage, ejection of excess storm water, and crop damage from drifting herbicides. One case enjoined development of a landfill based on anticipatory nuisance theory.

- The Oklahoma code also provides that "no person, firm, [etc.] shall pollute or permit the pollution of the water supply of a municipality, or any stream, pond, spring, lake, or other water reservoir or groundwater aquifer, which is used or which is being held for use as a water supply by a municipality." For purposes of this section, "pollution" is defined as "contamination or other alteration of the physical, chemical, or biological properties of any natural waters of the state, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental to the health, safety, or welfare of the general public, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, or fish or other aquatic life." To enforce this section, "a municipality may bring an action in the district court to enjoin any activity that will cause pollution of the water supply of a municipality whether or not such activity is regulated, licensed, or inspected." Municipalities also may bring a civil action in which "the measure of damages shall be the amount which will compensate for the detriment caused" by the pollution.

- Finally, "every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor."

Fish/Fisheries Laws

- The Wildlife Conservation Code provides that "no person may deposit, place, throw, or permit to be deposited, placed or thrown, any lime, dynamite or other explosive, poison, drug, sawdust, salt water, crude oil or any other deleterious, noxious or toxic substance in any waters of this state, or in any place where such substances may run or be washed into such waters." Violators are subject to a criminal fine of from $100 to $500 per day. In addition, restitution damages "may be recovered by a state environmental regulatory agency on behalf of the state in a civil action brought in the district court." Offending parties are "liable to pay the state an amount equal to the sum of money reasonably necessary to restock such waters, [including] the replacement cost of fish killed, costs of shipment and handling, and costs incurred in investigating, locating or establishing the responsible person."
OPERATIONAL REQUIREMENTS

Forestry Requirements

- The State Board of Agriculture "shall administer silviculture best management practices in cooperation with forestry land users under the provisions of state and federal water pollution laws, which include the process to identify silviculturally-related nonpoint sources of pollution as defined by the Oklahoma Environmental Quality Code and setting forth procedures and methods to control to the extent feasible such sources." The statute does not expressly set out enforcement authority for best management practices.

Agriculture Requirements

- The boards of county commissioners are "authorized to devise methods and means to stop and/or prevent soil erosion or soil drifting in their respective counties." The board may issue orders directing "that the land subject to soil erosion and drifting be cultivated, plowed, listed or planted, or may in any other manner take such steps as are necessary to prevent such soil erosion and drifting." If the land owner fails to comply with the order, the board is authorized to enter the land to take action to prevent soil erosion and drifting. In this case, the board also may assess reasonable restitution charges for the services taken against the affected lands. There also is a Conservation District Act which establishes a Conservation Commission that administers cost-share programs to encourage the adoption of management practices to prevent soil erosion and nonpoint source pollution. However, "[t]he Commission is not authorized to implement mandatory compliance with management practices to abate agricultural nonpoint source pollution," and does not appear to have enforcement authority.

- The Oklahoma Feed Yards Act establishes a license requirement for animal feed yards, and states that "owners and operators who are granted a feed yards license shall ... provide adequate drainage from feed yards premises of surface waters falling upon the area occupied by such feed yards; [and] take such action as may be necessary to avoid pollution of any stream, lake, river or creek." Regulations implementing the act require that Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations. The Act also requires that "a Pollution Prevention Plan shall be developed for each licensed facility. Pollution Prevention Plans shall ... include measures necessary to limit pollutants in runoff or groundwater."

It is unlawful to operate a feed yard without a permit from the State Board of Agriculture. The Board is authorized to enter premises to determine whether there are any violations, and may revoke a permit after a hearing and an administrative determination that the operator has violated the act or regulations. The Board also may institute a civil action or criminal prosecution; a feed yard owner or operator "who fails to take such action as may be reasonable and necessary to avoid pollution of any stream, lake, river or creek ... or who violates any rule or regulation of the Board adopted to prevent water pollution from feed yards pursuant to this act shall, upon conviction, be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of $200 to $10,000 for each violation, by imprisonment for not more
than 6 months for each violation, or by the assessment of a civil penalty up to $10,000 for each violation, or by any of such fine, imprisonment, and civil penalty.\textsuperscript{40}

In 1998, amendments provided additional coverage, including requiring annual training for employees responsible for treatment, storage or application of animal waste, increased setback requirements, and additional specific requirements for the Pollution Prevention Plan and design standards for waste retention structures.\textsuperscript{41}

- In 1998, Oklahoma also enacted legislation to regulate poultry waste in order to protect water quality. The law requires submittal of an animal waste management plan by every poultry feeding operation. It prohibits application of waste to land when the ground is frozen, during rainstorms, or where the land is already saturated by phosphorous or subject to severe erosion. Soil testing is required every three years, except in watersheds threatened by nutrients, where it is required annually. Commercial and private applicators of poultry waste must be certified by the state. All poultry feeding operations must register with the state annually and must utilize Best Management Practices, including no discharge of poultry wastes to the waters of the state, and isolation of stored poultry wastes from outside surface drainage by dikes and other structures. Penalties for violations will be under a point system established by the Board of Agriculture; applying poultry waste without a certificate is punishable by a $5,000 fine.\textsuperscript{42}

- Under the agriculture code, "no person owning or operating a fertilizer storage facility or a commercial fertilizer facility shall discharge, ... place or cause to be placed any fertilizer material in a location where it is likely to cause contamination of any surface water or groundwater of this state."\textsuperscript{43} However, "the provisions of this subsection shall not prohibit or otherwise restrict the land application of fertilizer for agriculture purposes or plant growth."\textsuperscript{44} After a public hearing, the Board of Agriculture has authority to assess an administrative penalty of $100 to $1,000 for each violation.\textsuperscript{45} The Board or its agent also may apply to court for an injunction, notwithstanding the existence of other remedies at law. Violations also are reported to the district attorney, who may institute appropriate proceedings to prosecute. Criminal violations are misdemeanors, punishable by a fine of $200 - $10,000, and/or imprisonment of up to 6 months.\textsuperscript{46}

- The water quality code contains prohibitions on the agricultural use of sewage sludge near water. Under these provisions, "sludge shall not be applied within two (2) feet of the highest seasonal water table nor applied to the land within one hundred (100) feet of a stream or body of water; and ... sludge shall not be applied within two hundred fifty (250) feet of a public or private water supply."\textsuperscript{47} As in other kinds of pollution cases, the Executive Director of the Department of Environmental Quality "shall make an order requiring such pollution to cease within a reasonable time, or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in his judgment be necessary to prevent further pollution."\textsuperscript{48} For noncompliance, the Department may institute an action in the proper court, and seek an injunction, a civil penalty of up to $10,000 per violation, and/or misdemeanor criminal penalties of $200 to $10,000, imprisonment for up to 6 months, or both.\textsuperscript{49}
The pesticide law \(^{50}\) includes registration of pesticides and licensing of pesticide applicators, but no provisions directly applicable to nonpoint pollution. The Board of Agriculture is authorized to adopt regulations on pesticide use as appropriate.\(^{51}\)

**Development and Other Earth-Disturbing Activities**

- The water quality code directs the Environmental Quality Board to promulgate rules bringing stormwater discharges into the state point source permitting program.\(^{52}\) These regulations require "construction sites associated with industrial activity, that will result in the disturbance of 5 or more acres total land area" to obtain a permit for discharge of stormwater.\(^{53}\) The permit requires a storm water pollution prevention plan to be developed for each construction site covered by the permit. Enforcement of the prohibitions is through the state pollution discharge elimination system. Thus, strictly speaking, such sites are treated as point sources.

- The municipality code requires that "lands [acquired by the municipality for waterworks] within 660 feet of the margin of a reservoir at maximum high water and necessary for natural drainage into the reservoir, shall not be used ... for any purpose other than the protection of the reservoir and the waters thereof from contamination and pollution. No structures shall be placed on such lands by the municipality, individual or corporation, except as are necessary in the furtherance of the protection of the reservoir from contamination or pollution, and in the use of the water."\(^{54}\) A municipality has a right of action for damages resulting from pollution of its water supply, and damages "shall be the amount which will compensate for the detriment caused thereby."\(^{55}\)

**Endnotes**

1. 27A Okla. Stat. § 2-6-105.
2. Okla. Regs. 252:610-7-1.
4. 27A Okla. Stat. § 2-6-105.
5. 27A Okla. Stat. § 2-6-901.
6. 27A Okla. Stat. §§ 1-3-101(B)(2), (D), (F).
7. As noted below, the Conservation Commission administers a cost-share program to encourage the adoption of management practices to prevent soil erosion and nonpoint source pollution. 27A Okla. Stat. §§ 3-2-106(A)(20). However, the same section also states that "[t]he Commission is not authorized to implement mandatory compliance with management practices to abate agricultural nonpoint source pollution." Id.
15. 50 Okla. Stat. § 12.
33 27A Okla. Stat. § 3-1-101 et seq.
36 Okla. Regs. 35:30-35-9(2).
39 2 Okla. Stat. § 9-211.
40 2 Okla. Stat. § 9-212.
41 S.B. 1175 (June 10, 1998, effective August 1, 1998).
47 27A Okla. Stat. § 2-6-501.5.
48 27A Okla. Stat. § 2-6-105.
49 27A Okla. Stat. § 2-6-901.
50 2 Okla. Stat. § 3-61 et seq.
51 2 Okla. Stat. § 3-85.
52 27A Okla. Stat. § 2-6-205(B).
53 Okla. Regs. 252:605, App. E.