OREGON
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Oregon’s water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges that pollute the waters, that consist of wastes or that result in water quality violations except for forestry conducted in compliance with BMPs.

- Oregon’s general discharge limitation provision prohibits persons from polluting "any waters of the state," from placing waste where it is "likely to escape or be carried into the waters of the state by any means," and from discharging wastes into water if the discharge reduces water quality "below the standards established by rule for such waters." There are exemptions for discharges in accordance with a valid discharge permit. The general prohibition is not expressly limited to point sources and thus can address nonpoint source discharges as well. Violations of the general prohibition provision are deemed a "public nuisance."

Other Discharge Prohibitions

- As noted above, public nuisance law applies to pollution discharges. However, Oregon law preempts any local government laws that make a forest or farm practice a nuisance, and the statute grants immunity from private nuisance actions for farming or forest practices "occurring on lands zoned for those uses" or "allowed as preexisting nonconforming use," unless the claim is for damage to crops, death, or serious physical injury.

Fish/Fisheries Laws

- Oregon state law establishes liability "where the injury, death, contamination or destruction of fish or other wildlife...or other wildlife habitat results from pollution" or from a permit violation. The Oregon Department of Environmental Quality ("DEQ"), Department of Fish and Wildlife or Attorney General may bring a civil suit if 60 days have passed following state agencies issuing a notice of violation and demand for reparations without compliance. The person is liable to the state for the value of the injured or destroyed fish or wildlife and for all costs of restoring fish and wildlife production and habitat.

OPERATIONAL REQUIREMENTS

Forestry Requirements

- Under the Forestry Practices Act (or "Act"), forest operations in Oregon must be conducted in accordance with the rules and standards "relating to air and water
pollution control..." Further, state law requires the state Forestry Board to establish best management practices ("BMPs"). "to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards." Operators are required to comply with BMPs, unless they can demonstrate that alternative practices yield better results. BMPs are subject to review pursuant to a petition on the basis that forestry operations being conducted in accordance with them is contributing to violations of water quality standards. The Forestry Board must revise the BMPs within two years or dismiss the petition. The State Forester enforces these requirements through inspection, enforcement, notice of violation, and issuance/service of administrative orders, such as cease and desist or reparation orders. The Act provides for general criminal and civil penalties, including potential civil sanctions of up to $5000 per violation. However, where forest operators are in compliance with the BMPs, then the operations are not considered in violation of any water quality standards. Also, forestry operations are immune from private nuisance actions if they are in compliance with the Act and with BMPs.

- The Act contains other requirements governing forestry operations, including authorizing the Forestry Board to require a written plan for forestry operations if operations are within one hundred feet of a stream used by fish or for domestic use. Also, operators must give written notice of chemical applications to the State Forester who in turn must notify persons who request it, are within 10 miles of the application and hold downstream surface water rights. Enforcement authorities are the same as those identified above under the Act.

- State law only permits the state Environmental Quality Commission and DEQ to impose "effluent limitations" on nonpoint source discharges resulting from forest operations if such limitations are federally mandated. See supra enforcement of general discharge limitations.

**Agriculture Requirements**

- The Oregon Department of Agriculture ("DOA") is required to develop rules "that directly regulate farming practices...that are for the purpose of protecting water quality" and that are applicable to "exclusive farm zones" under the state planning law or other agricultural lands.

- The DOA may also designate areas to be governed by a water quality management plan and adopt rules that require landowners in the affected area to perform those actions necessary to carry out the plan. In general, all activities, which include pesticide use, irrigation, grazing, within the affected area of the plan must be conducted "in full compliance with the plan and rules implementing the plan and with all rules and standards of the EQC relating to water pollution control..." The DOA is authorized to determine compliance with the management plan through entry and inspection and must give notice of violation and opportunity for compliance prior to assessing a civil penalty which can be up to $2500 for the first violation and up to $10,000 for a second violation. In addition, violations of the plan and/or rules are subject to all remedies and sanctions available to the DEQ or the EQC.
- In general, pesticide use is regulated under the water quality management plan discussed above, but Oregon law also contains a specific pesticide registration and labeling requirement with concomitant civil penalties. However, "reasonable and prudent" pesticide use is an accepted farm practice and thus immune from private nuisance suits.

- State law establishes a permit requirement for confined animal feeding operations containing conditions that "assure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state." The program is administered by the DOA which has the authority "to enter and inspect" and to conduct investigations at any time that a complaint alleges a violation presenting "an immediate threat to public health and safety." The statute also authorizes civil penalties for operating without a permit and for violations "relating to the control and prevention of water pollution from a confined animal feeding operation."

- Also Oregon regulations encourage all government agencies to coordinate planning and implementation of nonpoint source controls including "possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows" and "streambank erosion reduction projects."

**Development and Other Earth-Disturbing Activities**

- Oregon has an integrated state land use planning process. When the state planning commission ("commission") prepares comprehensive land use plans, setting the parameters for local land use planning, it must "give consideration to" a variety of environmentally sensitive areas, including flood plains, estuarine areas, tide, marsh and wetland areas, lakes and lakeshores, coastal areas, and wilderness and scenic areas. The commission also has authority to designate "areas of critical state concern" as part of the planning process. In terms of enforcement, the commission is authorized to order local governments to bring land use requirements into compliance with the comprehensive plan. The commission, as well as the county governing bodies, has investigative and hearing authority for alleged violations in the "areas of critical state concern," and injunctive relief is available. Remedies for noncompliance include withholding state grant money to local governments and legal and equitable remedies. Construction erosion control measures are authorized under the statewide land use planning law.

Endnotes
8 OAR 629-24-102.
23 Ore. Rev. Stat. 634.xxx & OAR 603-57-xxx. (cite?)
28 OAR 340-41-026(11)(c).