

PENNSYLVANIA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Pennsylvania's Clean Streams Law contains several provisions that may be used to take enforcement action against nonpoint source discharges.

- "It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined."¹ "Pollution" under the Clean Streams Law "shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid, or other substances into such waters."

- Regulations further specify that "The waters of the Commonwealth may not contain toxic substances attributable to point or nonpoint source waste discharges in concentrations or amounts that are inimical to the water uses to be protected."² And further that "Persons and municipalities engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of polluting substances shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause."³

- "No person or municipality shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this Act."⁴ The term industrial waste includes any substance other than sewage resulting from any "establishment."

- The Department of Environmental Protection also has the authority to regulate and "enforce reasonable orders and regulations for the protection of any source of water for present or future supply to the public, and prohibiting the pollution of any such source of water rendering the same inimical or injurious to the public health or objectionable for public water supply purposes."⁵

Violation of the Clean Streams Law is a summary offense punishable by a fine of not less than \$100 nor more than \$10,000 for each offense, and, in default of payment of such fine, imprisonment for ninety days.⁶ Willful or negligent violations are

misdemeanors of the third degree punishable by a fine of not less than \$2,500 nor more than \$25,000 for each separate offense and/or imprisonment in the county jail for a period of not more than one year.⁷ Civil penalties may be assessed not to exceed \$10,000 per day per violation,⁸ and the department may issue orders or seek injunctive relief.⁹

Other Discharge Limitations

- Nuisance law is available as an enforcement mechanism, and the Clean Streams Law declares certain water pollution discharges abatable as nuisances. "The discharge of...any substance into the waters of this Commonwealth, which causes or contributes to pollution as herein defined or creates a danger of such pollution is hereby declared not to be a reasonable or natural use of such waters, to be against public policy and to be a public nuisance."¹⁰ "Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for the abatement of public nuisances."¹¹

While Pennsylvania law does limit nuisance claims against agricultural operations that have been in existence for a year or more, these limitations expressly do not restrict or impede the authority of the Commonwealth to protect the public health, safety and welfare, nor do they affect or defeat private actions for damages resulting from violations of law or "on account of any pollution of, or change in condition of, the waters of any stream."¹²

Fish/Fisheries Laws

- No person shall: "Allow any substance, deleterious, destructive, or poisonous to fish, to be turned into or allowed to run, flow, wash or be emptied into any waters ..."¹³ "In criminal prosecutions under this section for water pollution known to be injurious to fish, it is not necessary to prove that the violation has actually caused the death of, or damage to, any particular fish."¹⁴

- "No person shall alter or disturb any stream, stream bed, fish habitat, water or watershed in any manner that might cause damage to, or loss of, fish without the necessary permits."¹⁵

- "It is unlawful for any person to throw, discard, leave, emit, deposit or allow the depositing of any garbage, bottles, cans, rubbish, wire, glass, paper, cardboard or wooden boxes, or cartons or any other type of debris, trash or other thing or substance in or along any waters or on any lands adjacent or contiguous to waters or in such manner that the thing or substance deposited flows into or is carried by wind into such waters or lands."¹⁶ The Commonwealth may recover damages in a civil action against "any person who kills any fish or who injures any streams or stream beds by pollution or littering."¹⁷

The Fish & Boat Commission may pursue criminal prosecution for violations of the law and regulations. Sanctions are up to \$5,000 and/or imprisonment for up to five years, and a fine of \$10 per fish killed.¹⁸

OPERATIONAL REQUIREMENTS

Forestry Requirements

- With respect to erosion and sediment control, forest harvesting activities involving earthmoving must comply with the regulatory program described under "Development and Other Earth-Disturbing Activities" below, including obtaining the necessary permit. Enforcement is under the Clean Streams Law.

Agriculture Requirements

- With respect to erosion and sediment control, although they do not need to obtain a permit, landowners engaged in plowing and tilling must nevertheless develop and implement an erosion and sediment control plan.¹⁹ Enforcement is under the Clean Streams Law.

- The Nutrient Management Act requires livestock operations to engage in nutrient management planning for all operations where the animal density exceeds two Animal Equivalent Units per acre. All such plans must be developed for operators by nutrient management specialists, and must be fully implemented within three years of their approval by local conservation districts. Also, any agricultural operation found in violation of the Clean Streams Law may be required to submit a plan within three months thereof.²⁰ Final regulations under the Act were published in June 1997. Violations of plans are punishable by a civil penalty of not more than \$500 for the first day of each offense and \$100 for each additional day of continuing violation. The State Conservation Commission may issue a warning in lieu of penalty where the owner or operator takes mediation action to resolve the violation. Enforcement orders and injunctive relief are available.²¹

- Special water pollution control regulations provide that manure storage facilities and land application of animal manures are exempt from water pollution control permitting if the design and operation are in accordance with practices described in Pennsylvania publications of best practices for these activities.²² Otherwise, permitting is needed under the Clean Stream Law.

- Pennsylvania requires certification of pesticide applicators,²³ and provides that "An application of a pesticide may not be made where weather conditions are such that it can be expected that the pesticide will move off of the proposed application site."²⁴

Development and Other Earth-Disturbing Activities

- Earthmoving activities within the Commonwealth must "be conducted in such a way as to prevent accelerated erosion and the resulting sedimentation." The person engaged in such activities "shall develop, implement and maintain erosion and sedimentation control measures which effectively minimize accelerated erosion and sedimentation. The erosion and sedimentation control measures shall be set forth in a plan ... and be available at all times at the site of the activity."²⁵ A permit is required prior to commencement of the activity. A permit is not required if the activity involves "plowing or tilling for agricultural purposes" or if the earthmoving activity disturbs less

than 25 acres. DEP can reduce the acreage limitation on a statewide basis, for special areas, or for counties or municipalities.²⁶ Administration and enforcement of the program may be delegated to counties and other units of local government that have an acceptable plan approved by the DEP.²⁷ Enforcement is under the Clean Streams Law, source of the discharge provisions discussed above, but also includes the withholding of building permits.²⁸

Endnotes

1. 3 P.S. section 691.401.
2. 25 Pa. Admin. Code § 93.8a(a).
3. 25 Pa. Admin. Code § 101.3(a).
4. 3 P.S. § 691.301.
5. 3 P.S. section 691.501.
6. 3 P.S. § 691.602(a).
7. 3 P.S. § 691.602(b).
8. 3 P.S. § 691.605.
9. 3 P.S. § 691.610.
10. 3 P.S. § 691.3; see also § 691.401, § 691.503.
11. 3 P.S. § 691.601.
12. 3 P.S. §§ 954, 955.
13. 30 Pa.C.S.A. § 2504(a)(2).
14. 30 Pa.C.S.A. § 2504(b).
15. 30 Pa.C.S.A. § 2502(a).
16. 30 Pa.C.S.A. § 2503(a).
17. 30 Pa.C.S.A. § 2506(a).
18. 30 Pa. C.S.A. §§ 2102, 2502-2506, 923(b).
19. Pa. Admin. Code § 101.4(b).
20. 3 P.S. § 1706.
21. 3 P.S. § 1712, § 1714.
22. 25 Pa. Admin. Code § 101.8.
23. 7 Pa. Admin. Code §§ 128.1 et seq.
24. 7 Pa. Admin. Code § 128.103(c).
25. 25 Pa. Admin. Code § 102.4.
26. 25 Pa. Admin. Code § 102.31.
27. 25 Pa. Admin. Code § 102.41.
28. 25 Pa. Admin. Code §§ 102.42, 102.43.