Texas

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

Discharge Prohibitions

Water Pollution Control Law

Texas’ water pollution law contains general prohibitions that may be enforced against nonpoint source discharges that cause pollution of waters of the state. Certain polluting activities under the jurisdiction of other agencies, including some agricultural and silvicultural activities, are exempted.

- The state water code provides that, except as authorized, no person may "discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state," discharge other waste which in itself or in conjunction with any other discharge or activity causes pollution of any water of the state, or commit any other act which causes pollution of any water in the state. Exempted from this prohibition are: discharges authorized by permit, discharges in compliance with a certified water quality management plan as provided under the state agriculture code (see below), and activities under the jurisdiction of the Parks and Wildlife Department, the General Land Office (coastal management) or the Railroad Commission of Texas.

Enforcement of the water code, or any rule, permit or order issued pursuant to it, is through administrative penalties up to $10,000 per day, civil penalties of between $50 and $10,000, and injunctions. The Parks and Wildlife Department may enforce the law where it appears that the violation affects aquatic life or wildlife, and local governments may bring suit for injunctive relief and/or civil penalties. The water code also provides for certain criminal offenses. For example, it is a criminal offense to discharge or permit to discharge any waste or pollutant into any state water that causes or threatens to cause water pollution unless in strict compliance with all required permits. It is also a crime (subject to greater fine and term of imprisonment) to "intentionally or knowingly discharge" a pollutant into or adjacent to water that causes or threatens to cause water pollution unless in strict compliance with permit.

Other Discharge Limitations

- "No person may deposit in any canal, lateral, reservoir or lake...the carcass of any dead animal...garbage, ashes...earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure." Enforcement is through local (misdemeanor) prosecution.

- Nuisance law may also apply. The water code requires the Department of Health to continue to apply its authority in the abatement of nuisances resulting from pollution not otherwise covered by the code. The state agriculture code provides that no nuisance action may be brought against an "agricultural operation" that was in operation one year or more prior to the action, if the actions that were the basis of the
nuisance action existed unchanged since the establishment of the operation. An agricultural operation includes the raising of stock or livestock, producing crops, viticulture, horticulture, as well as other activities. However, the provision does not restrict the authority of the state or a municipality to enforce the law.

- A city may establish a water pollution control and abatement program. If watershed quality assessments or other assessment identify water pollution attributable to non-permitted sources in a city with a population of 10,000 or more, the Texas Natural Resources Conservation Commission (TNRCC), after providing the city an opportunity to correct the problem and after a public hearing, may require the city to establish such a program. The law lists a number of program components, including "the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater."

- The water code authorizes the creation of various utility and water districts which may adopt rules and regulations to preserve water quality. These districts may also set reasonable civil penalties for the breach of a district rule. They are enforced by complaints in appropriate courts of jurisdiction in the county in which the district is located.

- The state water codes’s provisions on groundwater management authorize the creation of groundwater conservation districts with the approval of a majority of the voters in the area. The district may make and enforce rules to provide for "conserving, preserving, protecting, and recharging of the groundwater...in order to control subsidence or prevent waste of groundwater...." Waste includes "the pollution or harmful alteration of groundwater." Enforcement of a district’s rules is by injunction in court, as well as by "reasonable civil penalties....that shall not exceed the jurisdiction of a justice court...."

Fish/Fisheries Laws

- Under the state parks and wildlife code, no person may place in the water an explosive, poison or other substance or thing deleterious to fish. This does not apply to the use of explosives for construction purposes, if authorized. Enforcement is through local criminal (Class B misdemeanor) prosecution.

OPERATIONAL REQUIREMENTS

Forestry Requirements

- The state agriculture code provisions discussed below, governing the Soil and Water Conservation Board and the soil and water conservation districts, are applicable to silviculture activities.
Agriculture

- The state Soil and Water Conservation Board is the lead agency for the abatement of agricultural and silvicultural nonpoint source pollution. The Board is required to plan, implement and manage programs and practices for abating such pollution, and other state agencies with responsibilities in this area must coordinate their actions with the Board. If the Board identifies an area as having agricultural or silvicultural nonpoint source water quality problems, or as being in a "coastal zone" designated by the Coastal Coordination Council, the state board establishes a "water quality management plan certification program" that provides, through the local soil and water conservation districts, for the supervision of individual water quality management plans for these areas. The state board adopts rules for these plans in compliance with state water quality standards.

For those areas with "agricultural or silvicultural nonpoint source water quality problems" or for coastal zone areas, all complaints about violations of the water quality management plan or other rules relating to nonpoint source pollution are referred to the State Board. The State Board, in cooperation with the conservation district, investigates and if necessary, develops a corrective action plan. If the violator refuses to take corrective action, the state board refers the complaint to the TNRCC for enforcement.

- The directors of a soil and water conservation district may propose an ordinance "in the interest of conserving soil and soil resources and preventing and controlling soil erosion." An ordinance may require certain engineering operations, such as terraces, check dams, dikes, ponds, ditches; require the observance of certain methods of cultivations such as contour cultivating, furrowing, planting with erosion-preventing plants, forestation and reforestation; specify cropping programs and tillage practices; or adopt other land-use regulations that may assist conservation of soil resources and erosion. Once an ordinance prescribing land use regulations is approved by 90 percent of the voters, it is adopted and has the "force and effect of law" and is "binding" on all owners of land in the district. If the regulation is not being observed and that nonobservance "tends to increase erosion on that land and is interfering with the prevention and control of erosion on other land in the conservation district," the directors may bring suit in civil court. After a hearing, the court may require the defendant to perform the work; order that if the defendant fails to perform the directors may enter the land and perform; and order that the directors recover their costs. The court retains jurisdiction until the work is done.

- The water code authorizes the TNRCC to adopt rules to prohibit "the discharge of agricultural waste from a concentrated animal feeding operation into a playa; or...the use of a playa as a wastewater retention facility for agricultural waste." Playa is defined as "a flat-floored, clayey bottom of an undrained basin that is located in an arid or semi-arid part of the state, is naturally dry most of the year, and collects runoff from rain but is subject to rapid evaporation." An exception is provided for operations that were authorized to undertake these activities prior to the adoption of the rules. However, CAFOs that use a playa as a waste water retention facility are required to collect annual water samples; if the results show significant increases in chlorides or...
nitrates, and the TNRCC determines that the CAFO is the source of the pollution, the commission shall require "action to correct the problem."\(^{28}\)

- The Department of Agriculture is authorized to adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of preventing injury and "preventing any waterway pollution that is harmful to man or wildlife provided, however, that such rules be consistent with the Texas Natural Resources Conservation Commission rules" adopted under the state water code.\(^{29}\) Enforcement is through administrative penalties not to exceed $4,000, injunctions, and civil penalties of not less than $50 nor more then $10,000.\(^{30}\)

**Development and Other Earth-Disturbing Activities**

Apart from any programs that may be authorized by general land use regulation such as zoning, Texas law does have several other enforceable authorities applicable to nonpoint sources.

- The state water code requirement that certain cities adopt a water pollution control and abatement program, discussed above, is potentially applicable to the control of nonpoint source pollution from land-disturbing activities.

- While the agriculture code establishes the Soil and Water Conservation Board as the lead agency for abatement of agricultural and silvicultural nonpoint source pollution, the natural resources code provides that the General Land Office is the lead agency for the coordination of coastal erosion avoidance, remediation and planning. "The commissioner shall...promulgate rules, recommendations, standards, and guidelines for erosion avoidance and remediation...."\(^{31}\) Thus, the law may potentially reach some land-disturbing activities in the coastal zone that result in nonpoint source pollution.

**Endnotes**

4. VTCA Water Code 26.2121(g).
8. VTCA Water Code 251.004.
10. VTCA Water Code 26.177(b). In addition, certain municipalities must adopt a nonpoint source water pollution control and abatement program before the municipality adopts an ordinance creating an extraterritorial jurisdiction. VTCA Water Code 26.179.
11. VTCA Water Code 49.001, *et seq*.
14. VTCA Water Code 36.001(8).
15. VTCA Water Code 36.102.
17 VTCA Parks & Wildlife Code 66.012.
19 VTCA Agriculture Code 201.026.
20 VTCA Agriculture Code 201.026.
21 VTCA Agriculture Code 201.121(a).
22 VTCA Agriculture Code 201.121(b).
23 VTCA Agriculture Code 201.123, 201.124.
24 VTCA Agriculture Code 201.128.
25 VTCA Agriculture Code 201.128.
26 VTCA Water Code 26.048.
27 VTCA Water Code 26.048(d).
28 VTCA Water Code 26.048(b).
29 VTCA Agriculture Code 76.131(a).
30 VTCA Agriculture Code 76.154 - 76.156.
31 VTCA Natural Resources Code 33.601.