

WEST VIRGINIA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

West Virginia's water pollution control law appears not to provide for the regulation or prohibition of nonpoint source discharges.¹

Other Discharge Limitations

- A separate law establishes criminal penalties for wastes (excluding commercial or industrial wastes regulated under the pollution control law) thrown or released "into any river, creek or stream, or upon the surface of any land adjacent to any river, creek or other stream in such a location that high water or normal drainage conditions will cause such offensive materials to be washed, drained, or cast into the river, creek or other stream". Violation is a misdemeanor subject to a fine of \$100 to \$1000.²

- Another provision establishes criminal penalties for "Any person who knowingly and willfully throws, causes to be thrown or releases any dead animal, carcass, or part thereof, garbage, sink or shower waste, organic substance, human or animal excrement, contents of a privy vault, septic tank, cesspool or the effluent from any cesspool or nauseous or offensive or poisonous substances into any well cistern, spring, brook, pond, stream, or other body of water which is used for domestic purposes".³ The offense is a misdemeanor subject to a fine of \$25 to \$200. In addition, conviction creates a duty to remove and properly dispose of the materials as directed by the bureau of public health. Each day of failing to comply is a separate violation of the section.

- It is a misdemeanor "to place, deposit, dump, or throw, or cause to be placed, deposited, dumped or thrown, any litter ... garbage, refuse, trash, can, bottle, paper, ashes, carcass of any dead animal or part thereof, offal, or any other offensive or unsightly matter into any river, stream, creek, branch, brook, lake or pond, or upon the surface of any land within one hundred yards thereof, or in such location that high water or normal drainage conditions will cause any such materials to be washed into any river, stream, creek, branch, brook, lake or pond."⁴ For a first offense, the sanction is a fine of \$50 to \$500 or alternatively, 8 to 16 hours community service cleaning up unlawfully deposited matter along stream or river banks. For a second offense, the sanction is a fine of \$250 to \$1000 plus a jail term of 24 hours to 6 months, with the court able to substitute 16 to 32 hours of clean-up for the fine or for the incarceration, but not for both. For third and subsequent offenses, the sanction is a fine of \$500 to \$2000 plus a jail term of 48 hours to one year, with the court able to substitute 32 to 64 hours of clean-up for the fine or for the incarceration, but not both.

- Nuisance remedies are expressly preserved for water pollution. West Virginia's statutory water pollution provisions do not "abridge or alter rights of action or

remedies now or hereafter existing, nor shall any provisions of this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers, or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to collect damages."⁵

Fish/Fisheries Laws

West Virginia does not appear to have enforceable provisions relevant to nonpoint source water pollution in its fisheries laws.

OPERATIONAL REQUIREMENTS

Forestry Requirements

- West Virginia provides enforceable authorities for nonpoint source water pollution resulting from commercial forestry practices. State law also requires a license for commercial timber harvest and purchase of timber or logs for resale, and certification of supervisors of logging sources.⁶ "Upon notification of the chief [of the office of water resources of the division of environmental protection] or upon a finding by the director [of the division of forestry of the department of commerce, labor and environmental resources] that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the director shall issue a written compliance order".⁷ The director may issue written compliance orders; issue immediate suspension of work orders (if circumstances endanger life or threaten or result in uncorrectable soil erosion or water pollution); suspend licenses or certificates for 30 to 90 days for the second violation within two years of this article or the water pollution act; or revoke licenses or certificates for third violations within two years.⁸ The director may seek civil penalties of up to \$2,500 for the first offense and \$5,000 for subsequent offenses.

Agriculture Requirements

- Local soil conservation districts, through referenda, may adopt land use regulations "in the interest of conserving soil and soil resources and controlling soil erosion." The regulations may include provisions for construction of soil-protective structures, provisions requiring particular methods of cultivation, specifications of cropping and tillage practices, provisions limiting cultivation of sensitive areas, and other measures.⁹ The supervisors of the soil conservation district have authority to seek enforcement of the regulations in court if "nonobservance tends to increase erosion ... and is interfering with the prevention or control of erosion on other lands within the district".¹⁰ Watershed improvement districts, organized within soil conservation districts, can also exercise these powers of a soil conservation district.¹¹

- The commissioner of agriculture can develop mandatory BMPs for application and use of fertilizers and manures upon having evidence of groundwater pollution that could be effectively prevented with BMPs.¹²

• The state has authority for general groundwater protection rules for pesticides, including rules intended to prevent non-point pollution.¹³ The only two stated rules are (1) to follow the label or special orders by the commissioner of agriculture to protect groundwater, and (2) to comply with the rules for certified applicators and pesticide businesses when applying restricted use pesticides. "Other non-point source management practices, voluntary and/or mandatory are reserved."¹⁴ The commissioner may issue remediation orders, or may seek civil penalties.¹⁵

Development and Other Earth-Disturbing Activities

West Virginia does not appear to have specific provisions apart from any that may be contained in urban stormwater programs under the Clean Water Act, or that may be authorized by general land use provisions that provide for municipalities and counties to plan, zone, and regulate.¹⁶ State law governing land use regulation notes that local land use plans may include measures for "sewers, sanitation and drainage", "stream pollution", and "conservation of water, soil, agricultural and mineral resources."¹⁷ The law gives municipal and county governments authority to regulate land use and structures to carry out zoning objectives.¹⁸ Enforcement is by civil injunction, or misdemeanor prosecutions with penalties of \$10 to \$300.¹⁹

Endnotes

¹ W. Va. Code §22-11-8.

² W. Va. Code §16-9-3.

³ W. Va. Code §16-9-2.

⁴ W. Va. Code § 20-7-28.

⁵ W. Va. Code § 22-11-27.

⁶ W. Va. Code § 19-1B-4; § 19-1B-7.

⁷ W. Va. Code § 19-1B-5(b).

⁸ W. Va. Code § 19-1B-5(b)-(e).

⁹ W. Va. Code § 19-21A-9.

¹⁰ W. Va. Code § 19-21A-10.

¹¹ W. Va. Code ch. 19, art. 21B.

¹² 61 CSR 6C-4.3. See also 61 CSR 6C-4.4, which appears to require some level of mandatory BMP promulgation if valid data show increases in groundwater contamination from fertilizers or manures in the state.

¹³ 61 CSR 12G-7.

¹⁴ 61 CSR 12G-7.3.

¹⁵ 61 CSR 12G-5.1.14 & -8; 61 CSR 12G-9.1.

¹⁶ W. Va. Code § 8-24-1.

¹⁷ WVC §8-24-17(b)(7),(8),(17).

¹⁸ W. Va. Code § 8-24-39.

¹⁹ W. Va. Code § 8-24-67.