WYOMING

Enforceable Mechanisms for the Control of Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Wyoming’s water pollution control law contains a general provision that may be used to enforce against nonpoint source discharges of pollution or waste. In addition, the permitting authority apparently can extend to nonpoint sources, and where permits are required, the state’s antidegradation policy requires that permits be conditioned on implementation of best management practices to control nonpoint sources.

- The Wyoming Environmental Quality Act contains a general prohibition against "caus[ing], threaten[ing] or allow[ing] the discharge of any pollution or waste into the waters of the state" or "alter[ing] the physical, chemical, radiological, biological or bacteriological properties of any waters of the state" unless authorized by permit.1 "Waste" is defined as "sewage, industrial waste and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any waters of the state."2 The prohibition has been held to apply to all polluting activities, not only those for which a permit could have been obtained.3

- The Act authorizes the Wyoming Department of Environmental Quality to issue environmental permits "when the department has, by rule or regulation, required a permit," and allows the department to "impose such conditions as may be necessary to accomplish the purpose of this act."4 Since the permitting authority is not expressly limited to point sources, it arguably could be applied to nonpoint sources. Further, the water quality section of the Wyoming Administrative Code contains an antidegradation provision, which requires that "reasonable best management practices for nonpoint sources" be implemented before a permit can be issued.5 In this context, "best management practices" are defined as practices "determined to be the most technologically and economically feasible means of preventing or reducing nonpoint source pollution."6 The statute allows for variances from environmental permits after a notice-and-comment procedure,7 however, the DEQ apparently has prohibited issuance of water pollution variances under this section, and this decision has been judicially upheld.8

The DEQ may investigate, hold administrative hearings, and issue cease-and-desist orders for violation*’s of the environmental code.9 It may assess administrative civil penalties of up to $10,000 per violation per day; criminal penalties of up to $25,000 per violation per day and/or imprisonment of up to one year; seek temporary and permanent injunctive relief; and receive reparations for violations that "cause the death of fish, aquatic life or game or bird life."10

Other Discharge Limitations

The Public Health and Safety Code provides two definitions of criminal nuisance that are relevant to nonpoint source pollution.
• The first nuisance provision is a prohibition on placing dead animal matter or other waste, including "any refuse or garbage, or any offensive matter or substance whatever" into water bodies or in any place "so located that the said substance shall directly or indirectly cause or threaten to cause the pollution or impairment of the purity and usefulness" of water bodies. This provision expressly exempts municipal garbage disposal systems and sewage systems, but has been held to apply to cattle lots, poultry businesses, and meat processing plants depending on the circumstances of the case. It is apparently enforced by both law enforcement and health authorities, and violations are misdemeanors, punishable by a fine of $50-$200 and/or imprisonment of up to six months.

• The second nuisance provision declares it a nuisance to "in anywise pollute or obstruct any watercourse, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive." This provision, enforced by local law enforcement officials, carries a maximum $100 fine per violation; these officials also may seek to abate the nuisance.

Note that under the Wyoming Right to Farm and Ranch Act, farm or ranch operations cannot be held to be a public or private nuisance if they "conform to generally accepted agricultural management practices" and existed prior to a change in land use on the adjacent land. Likewise, proof of compliance with feedlot regulations (discussed below) is an absolute defense against any nuisance action brought by a person whose property ownership is subsequent in time to the date of establishment of the feedlot, if those feedlot activities are also subject to local or DEQ regulation.

Fish/Fisheries Laws

• The Public Health and Safety Code contains a general provision that prohibits manufacturing and industrial works from "throw[ing] or deposit[ing] in, or in any way permit[ting] to pass into any natural stream or lake ... wherein are living fish, any sawdust, chemicals, mill-tailing, or other refuse matter of deleterious substance or poisons ... that will or may tend to the destruction or driving away from such waters any fish...or that will or may tend to pollute, contaminate, render impure for domestic, irrigation, stock or other purposes."

• Similarly, the Fish and Game Code states that "[n]o person shall allow any refuse or substance to pass into any public water: (i) [w]hich drives away or is injurious to fish, or wildlife; or (ii) [w]hich obstructs the natural flow, channels, or condition of any stream or body of water."

Both of these provisions are enforced by the Health Department and the Department of Fish and Game; violation of either of them is a misdemeanor, punishable by fines of $50-$100 and imprisonment of 30 days to six months. Neither of the provisions applies to slag from smelters, or to operations that construct settling ponds.
OPERATIONAL REQUIREMENTS

Forestry Requirements

State forestry laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

Agriculture Requirements

Wyoming law regulates feedlot operations and pesticide management practices that might contribute to nonpoint source water pollution. In addition, soil conservation districts are authorized to prescribe best management practices to combat erosion, and may provide financial incentives for landowners to adopt these BMPs.

- In a chapter titled "Livestock Feedlot Operations," the Wyoming Statutes authorize the Department of Environmental Quality to issue regulations governing livestock feedlots and to establish schedules for compliance with the rules. Operations that are in compliance with the regulations have an absolute defense against a nuisance action brought by a person whose property ownership is subsequent in time to the date of establishment of the feedlot, if the feedlot activities are subject to other local or DEQ regulation. Feedlot operators are also required to comply with applicable local zoning requirements. Until recently, there appears to have been little, if any, regulatory activity under this chapter of the Statutes.

In February 1997, the legislature amended the Environmental Quality Act to require DEQ to promulgate "standards for housed facilities where swine are confined, fed and maintained for a total of forty-five (45) consecutive days or more in any twelve (12) month period and the feedlot or facility is designed to confine an equivalent of one thousand (1,000) or more animal units." The new standards must include financial assurance for facility cleanup and closure; waste management plans; setback requirements that facilities be sited at least one mile from homes, schools and towns and 1/4 mile from domestic water wells and streams; and notice-and-comment provisions for any new permits. If any county adopts a land use plan or zoning law with stricter setback standards, those will prevail over the statute.

- Wyoming also has enacted a general pesticide control regime, which largely consists of registration and labeling requirements and requires that pesticides be applied in accordance with the labeling. It includes a general prohibition against discarding, transporting or storing pesticides or containers "in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a way harmful to any wildlife therein." The board of certification may promulgate rules governing discarding and storage of pesticides and pesticide containers, and is authorized to enter and inspect premises for enforcement of the pesticide law. Violations of the law are misdemeanors, subject to a fine of up to $500 and/or imprisonment of up to one year for the first offense, and $1,000 and/or imprisonment of up to one year for subsequent offenses; actions for injunctive relief are also possible.
Finally, the Wyoming Statutes establish soil conservation districts and authorize them to conduct research, demonstration projects, improvement projects, and so on. The districts may develop and publicize comprehensive plans that specify best management practices for soil conservation, but these do not appear to be enforceable. However, the district’s provision of loans, grants, and other benefits to private landowners may be conditioned on implementation of best management practices.

Development and Other Earth-Disturbing Activities

Under the Land Use Planning Act, the state land use commission is authorized to develop a state land use plan, which may include "areas of critical or more than local concern." These are defined as "areas...where uncontrolled or incompatible large scale development could result in damage to the environment, life, or property, where the short or long term public interest is of more than local significance," and can include, inter alia, "fragile or historic lands, natural hazard lands, renewable resource lands." However, enforceability of the Act is doubtful unless local regulations are enacted; the statewide plan apparently is intended to serve as a "guideline" for the development and adoption of local land use plans and zoning regulations. Even in "areas of critical or more than local concern," the state land use commission is authorized only to "establish developmental guidelines" and to "assist local governments" in planning for these areas.

Endnotes
28 Wyo. Stat. § 35-7-350 et seq.
35 Wyo. Stat. § 9-8-101 et seq.
37 Wyo. Stat. § 9-8-101 et seq.