

GEORGIA
EROSION AND SEDIMENTATION
CONTROL LAW AND REGULATION:
AN OVERVIEW

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GEORGIA PROPERTY RIGHTS

- OWNER OF UPGRADIENT PROPERTY DOES NOT HAVE THE RIGHT TO CAUSE SURFACE WATER FLOWS THAT RUN OFF OF PROPERTY TO BE ALTERED FROM THEIR NATURAL CONDITION
- WATER QUANTITY; RATE OF FLOW; WATER QUALITY
- OWNER/ENGINEER/CONTRACTOR ON DEVELOPMENT PROJECT HAVE SHARED LIABILITY EXPOSURE TO DOWNGRADIENT PROPERTY OWNERS

COMMON LAW LIABILITY IS INDEPENDENT FROM BUT RELATED TO REGULATORY REQUIREMENTS AND LIABILITY

- TRESPASS AND NUISANCE LIABILITY
- NOT NECESSARILY DEPENDENT ON PROOF OF NEGLIGENCE OR VIOLATION OF REGULATORY REQUIREMENTS

TRESPASS AND NUISANCE LIABILITY EXPOSURE

- ACTUAL DAMAGES: e.g., COST TO CURE
- GENERAL DAMAGES: DISCRETION OF JURY
- LITIGATION EXPENSES/ATTORNEY'S FEES
- PUNITIVE DAMAGES
- INJUNCTIVE RELIEF

INSURANCE COVERAGE: DON'T COUNT ON IT

- MUDDY WATER = POLLUTED WATER
- INSURANCE POLICIES WITH POLLUTION EXCLUSION CLAUSE
- SPECIAL POLLUTION COVERAGE AVAILABLE
- NOT ALL POLICIES COVER PUNITIVE DAMAGES
- EXCLUSION FOR ACTS/OMISSIONS WITH KNOWLEDGE OF LIKELY HARM

DYNAMICS BETWEEN OWNER, ENGINEER, CONTRACTORS, INSPECTOR, AND THIRD PARTIES

- WHAT DOES THE FINE PRINT SAY IN THE CONTRACTS AND SPECS?
 - PASS THROUGH TERMS AND CONDITIONS
 - INDEMNITY CLAUSES
 - ARBITRATION CLAUSES
 - LIMITATION OF LIABILITY CLAUSES
- FINGERPOINTING 101
- VICARIOUS TORT LIABILITY
- APPORTIONMENT OF DAMAGES AMONG JOINT TORTFEASORS

REGULATORY FRAMEWORK

- FEDERAL CLEAN WATER ACT
- GEORGIA WATER QUALITY ACT
- GEORGIA EROSION AND SEDIMENTATION ACT
- LOCAL EROSION AND SEDIMENTATION ORDINANCES

FEDERAL CLEAN WATER ACT

- FEDERAL/STATE OVERLAP
- CITIZEN SUIT PROVISIONS
- PRE-LITIGATION 60 DAY NOTICE REQUIREMENT
- CIVIL PENALTIES UP TO \$56,461 PER DAY PER VIOLATION
- POLLUTION ABATEMENT
- ATTORNEY'S FEE PROVISIONS
- CRIMINAL EXPOSURE FOR NEGLIGENT AND KNOWING VIOLATIONS
- CRIMINAL EXPOSURE FOR FALSE STATEMENTS IN REPORTS, ETC.

GEORGIA WATER QUALITY ACT

- BASIS FOR DELEGATED FEDERAL CLEAN WATER ACT AUTHORITY AND GENERAL NPDES PERMITS FOR CONSTRUCTION ACTIVITY
- MANDATORY STANDARD UNDER REGULATIONS: “ALL WATERS SHALL BE FREE FROM TURBIDITY WHICH RESULTS IN A SUBSTANTIAL VISUAL CONTRAST IN A WATER BODY DUE TO A MAN-MADE ACTIVITY”
- PROPER DESIGN, INSTALLATION, AND MAINTENANCE OF BMPs NEEDED TO MEET THAT STANDARD

PROHIBITION OF 25+ NTU INCREASE IN RECEIVING WATERS

- SUPPLEMENTAL TO NARRATIVE STANDARD THAT WATERS BE FREE FROM TURBIDITY WHICH RESULTS IN SUBSTANTIAL VISUAL CONTRAST

GENERAL NPDES PERMITS

- ISSUED BY GAEPD
- LOCAL ISSUING AUTHORITIES WITH STATUTORY MANDATE TO ENFORCE
- VIOLATIONS SUBJECT TO CITIZEN SUITS
- OVERLAP WITH BUT DO NOT SUPERSEDE NEED FOR LAND DISTURBING PERMITS UNDER GEORGIA EROSION AND SEDIMENTATION ACT
- GAEPD AUTHORITY DOES NOT REPLACE LOCAL AUTHORITY AND GSWCC ESPCP REVIEW
- MANUAL FOR EROSION AND SEDIMENT CONTROL (GREEN BOOK) APPLIES

GA EROSION AND SEDIMENTATION ACT

- LAND DISTURBING ACTIVITY PERMITS REQUIRED FROM LOCAL ISSUING AUTHORITIES
- LOCAL ISSUING AUTHORITY (LIA) WITH PRIMARY ENFORCEMENT RESPONSIBILITY
- GSWCC WITH RESPONSIBILITY FOR ESPCP REVIEW
- NOT SUPERSEDED BY GAEPD REVIEW OF ESPCPs UNDER GENERAL PERMITS
- MANUAL FOR EROSION AND SEDIMENT CONTROL (GREEN BOOK) APPLIES
- GSWCC WITH DUTY TO REVIEW LIA ACTIONS SEMI-ANNUALLY AND REPORT DEFICIENCIES TO GAEPD

WHAT IS DEPOSIT OF SEDIMENT INTO STATE WATERS?

- “Sediment” means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by, wind, water, ice, or gravity as a product of erosion.
- State Waters: rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, wetlands, and all other bodies of surface or subsurface water, natural or artificial, ... which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

ESPCP MUST BE EFFECTIVE TO PREVENT DEPOSIT OF SEDIMENT INTO STATE WATERS

- GREEN BOOK STANDARDS APPLY, PLUS ADDITIONAL STANDARDS IN OCGA § 12-7-6
 - Stripping of vegetation, regrading, and other development activities shall be conducted in such a manner so as to minimize erosion
 - Cut and fill operations must be kept to a minimum
 - Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential
 - Whenever feasible, natural vegetation shall be retained, protected, and supplemented
 - The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum
 - To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized.

GREEN BOOK BMP STORM INTENSITY DESIGN STANDARD

- BEST MANAGEMENT PRACTICES (BMP) - A collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control for all rainfall events up to and including a 25-year, 24-hour rainfall event

PERMITTEE DUTY TO REPORT, CLEAN-UP, AND CORRECT ESPCP/BMP DEFICIENCIES

- TRIGGERED BY SEDIMENT DEPOSITION INTO STATE WATERS
- MUST CLEAN UP SEDIMENT-IMPACTED SURFACES TO PREVENT SUBSEQUENT DEPOSITS INTO STATE WATERS
- NEW/MODIFIED BMP MUST BE OPERATIONAL WITHIN 7 DAYS UNLESS TIMING INFEASIBILITY IS DOCUMENTED
- CWA CASE LAW: DOWNSTREAM SEDIMENT CONSTITUTES CONTINUING VIOLATION

VIOLATION: FAILURE TO DESIGN, INSTALL OR MAINTAIN ADEQUATE BMPs

- VIOLATION WHETHER OR NOT 25+ NTU TURBIDITY READING EXISTS
- REMEMBER NARRATIVE STANDARD PREVENTING SUBSTANTIAL VISUAL CONTRAST IN RECEIVING WATERS
- ESCAPE OF SEDIMENT FROM SITE SHALL BE PREVENTED BY INSTALLTION OF BMPs, INCLUDING SEDIMENT TRAPS, PRIOR TO LAND DISTURBING ACTIVITIES

BUFFER VARIANCES

- NUMEROUS CONDITIONS, INCLUDING BUT NOT LIMITED TO:
 - DETAILED JUSTIFICATION OF NEED FOR VARIANCE
 - ADEQUATE ESPCP
 - AVOIDANCE/MINIMIZATION OF BUFFER IMPACT TO FULLEST EXTENT PRACTICABLE
 - COMPLETE IDENTIFICATION OF ALL STATE WATERS
 - LOCAL ISSUING AUTHORITY INSPECTION AND CERTIFICATION OF ALL STATE WATERS AND BUFFERS
 - MUST BE AT LEAST AS PROTECTIVE OF ENVIRONMENT AS UNDISTURBED BUFFER WOULD PROVIDE
 - ON-SITE MITIGATION TO EXTENT POSSIBLE
 - GAEPD AND LOCAL ISSUING AUTHORITY CONSIDERATION AND APPROVAL OF VARIANCE

MANDATORY STOP WORK ORDER

- OCGA § 12-7-12(d): When a violation of this chapter in the form of taking action without a permit, failure to maintain a stream buffer, or **significant amounts of sediment**, as determined by the local issuing authority or by the director or his or her designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a **stop work order shall be issued** by the local issuing authority or by the director or his or her designee.