

CHAPTER 1

THE EROSION AND SEDIMENTATION ACT OF 1975

On April 24, 1975, the Honorable George Busbee, Governor of the State of Georgia, signed into law as Act 599, the Erosion and Sedimentation (E&S) Act of 1975 (O.C.G.A. § 12-7-1 et. seq.) This landmark legislation was the result of over five years of exhausting work, debate and legislative compromise.

With the passage of the Act, Georgia joined the few far-sighted states adopting legislation specifically designed to protect soil and water resources. Georgia's E&S Act shows great concern for local implementation and local enforcement. There exists in Georgia a mechanism whereby local decision makers can do something about the abuses of soil and water resources.

O.C.G.A. § 12-7-2 states: "It is found that soil erosion and sediment deposition onto lands and into waters within the watersheds of this state are occurring as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement and construction activities, and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. It is, therefore, declared to be the policy of this state and the intent of this chapter to strengthen and extend the present erosion and sediment control activities and programs of this state and to provide for the establishment and implementation of a state-wide comprehensive soil erosion and sediment control program to conserve and protect land, water, air and other resources of this state."

Sediment in Georgia comes from many sources including agricultural operations, forestry practices, construction projects and other activities that convert land from one use to another.

Historically, farm land has been the greatest source of sediment. The trend was reversed around the midpoint of the century with much idle land or land in row crops planted to perennial grasses or trees. In 2007, the Annual Natural Resources



Figure 1.1 - Advanced gully erosion on an abandoned construction site.

Inventory, conducted by the Natural Resources Conservation Service (NRCS), showed a continuing trend in reduced soil erosion of croplands. Between 1982 and 2007, soil erosion from wind and water on U.S. cropland (on non-Federal land) decreased 43%. In 1982, the total was 3.06 billion tons and in 2007, the total was 1.73 billion tons.

Urban development is now a major source of sedimentation and pollutants into waters of the State. The increased impervious cover due to developments also increases runoff and stream flows which cause stream bank erosion, and increases the elevation of the floodplain.

Erosion damage is costly to repair, often requiring regrading or replacement of eroded soil and replacement of damaged pavements and structures. Sediment damages are not only unnecessary, but extremely costly.

Georgia's Soil and Water Conservation Districts (SWCD) have been charged with performing a vital role in the implementation of Act 599. Since their formation beginning in 1937, the districts have worked toward treating each acre of land in accordance with its capabilities. The Districts, and the District Supervisors for each county in Georgia can be found on the Georgia Soil and Water Conservation Commission (GSWCC) website at <https://gaswcc.georgia.gov/>.

The Manual for Erosion and Sediment Control in Georgia deals primarily with land-disturbing activities in urban and urbanizing areas. It should be remembered that the same methodology and expertise is required in planning for the conservation of soil and water on any lands. The Manual for Best Management Practices for Georgia Agriculture is

available on the GSWCC website, and the Manual for Forestry BMPs is available from the Georgia Forestry Commission.

PROVISIONS UNDER ACT 599

Act 599 requires that governing authorities of Georgia's 159 counties and more than 550 incorporated municipalities adopt comprehensive ordinances governing land-disturbing activities within their boundaries. The ordinances must contain technical principles as provided in the law and procedures for issuance of permits. All Erosion, Sedimentation & Pollution Control Ordinances must be reviewed and approved by the Environmental Protection Division (GA EPD) of the Georgia Department of Natural Resources (DNR). A model ES&PC Ordinance can be found on both the GSWCC and GA EPD websites, <https://gaswcc.georgia.gov/> and <http://epd.georgia.gov/>.

Local ordinances must meet or exceed the standards, requirements, and provisions of the E&S Act and the state general permit (NPDES). The ordinance may not exceed the NPDES permit requirements for monitoring, reporting, inspections, design standards, turbidity standards, education and training, and project size thresholds with regard to education and training requirements.

The law could have a significant impact on any area's natural resource base because it requires detailed planning before land-disturbing activities are undertaken. The law requires that erosion and sediment control plans for each non-exempt activity be prepared and submitted with application to the Local Issuing Authority (LIA) for a permit. The



Figure 1.3 - If unchecked, sediment would gradually fill up this lake.

plans will then be forwarded to the appropriate Soil and Water Conservation District. The District shall have 35 days to approve or deny the plan with the reason for denial. With each resubmittal of the plan, the 35 days for review starts again. The plan review would bypass District approval if the LIA demonstrates that it possesses the capability and expertise to conduct erosion and sediment control plan reviews and enters into an agreement with the District.

After a thorough analysis of the plans, they will be returned to the issuing authority with the District's recommendations upon which the issuing authority will issue or deny permits. Should a permit be denied because of a discrepancy in the plans, such discrepancies must be made apparent to the applicant. The law requires that a permit be issued or denied within a period not to exceed 45 days after the plan and applications are submitted. If a permit is denied there are appeal procedures provided for in the Act.

Municipalities and counties failing to have adopted an E&S Ordinance will be subject to rules and regulations developed by the GA EPD.

GA EPD does not issue Land Disturbance Permits. The terms of the NPDES permit will apply and be enforced by GA EPD. Coverage under the state general permit will begin fourteen days after submitting a Notice of Intent (NOI), and the required fees to the appropriate GA EPD office. It is recommended that the applicant reads and understands the appropriate NPDES permit.

In 2003, the E&S Act was amended requiring all persons involved in land development design, review, permitting, construction, monitoring, or in-



Figure 1.2 - Maintaining outlet protection due to BMP failures higher in the drainage basin.

spection or any land-disturbing activity to meet the education and training certification requirements developed by the GSWCC.

To meet the requirements of O.C.G.A. § 12-7-19, GSWCC has developed the following four levels of certification:

- 1 Level I Awareness Seminar, a two hour class which is for sub-contractors.
- 2 Level IA Fundamentals Seminar, an eight hour class for persons installing and/or inspecting BMPs.
- 3 Level IB Advanced Fundamentals Seminar, an eight hour class for regulatory inspectors and non-regulatory personnel contracted to conduct regulatory work.
- 4 Level II Introduction to Design Seminar, a sixteen hour class for persons designing and/or reviewing ES&PC plans.

LAND-DISTURBING ACTIVITY:

Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to:

1. clearing
2. dredging
3. grading
4. excavating
5. transporting
6. filling

EXEMPTIONS FROM THE ACT

O.G.C.A. § 12-7-17

LAND DISTURBING ACTIVITY DOES NOT INCLUDE:

1. **Surface mining**, as the same as defined in Code Section 12-4-72
2. **Granite quarrying** and land clearing for such quarrying.
3. **Minor land-disturbing activities**, such as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion*
4. **The construction of single-family residences**, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection (b) of Code Section 12-7-6 and this paragraph.

For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of this title. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters.

For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams

into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of Code Section 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the issuing authority

5. **Agricultural operations** as defined in Code Section 1-3-3 to include those practices involving the establishment, cultivation, or harvesting of products of the field or orchard; the preparation and planting of pasture land; farm ponds; dairy operations; livestock and poultry management practices; and the construction of farm buildings
6. **Forestry land management practices**, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of subsection (b) of Code Section 12-7-6, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after the completion of such forestry practices
7. **Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture**
8. **Any project involving less than one acre of disturbed area**; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainage-ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year round; provided, however, that any person responsible

for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage-way must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained in this chapter shall prevent a city or county which is a Local Issuing Authority from regulating any such project which is not specifically exempted by paragraph (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this Code section;

9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to the provisions of Code Section 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a Notice of Intent under the state general permit shall be submitted to the Local Issuing Authority, the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in Code Section 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders**.

10. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory ju-

isdiction of the Federal Energy Regulatory Commission, any cable television system as defined in Code Section 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in Code Section 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in Code Section 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders**.

11. Public water system reservoirs.

*Minor land-disturbing guidance document can be found at the GA EPD website <http://epd.georgia.gov/>.

**Coverage under the NPDES permit is not required for discharges of storm water associated with infrastructure construction projects that consist solely of routine maintenance for the original purpose of the facility that is performed to maintain the original line and grade and the hydraulic capacity, as applicable. For eligibility requirements for this exemption please refer to GAR 100002 Part I.C.1.c.

GSWCC considers maintenance to be the work of keeping something in proper condition; or upkeep.

Abandoned sites may exist within the jurisdiction of an LIA where land disturbance has previously taken place on permitted construction projects. Due to various reasons, work on the projects may

have permanently stopped without the site having undergone final stabilization. The LIA or the owner of such property should contact GA EPD for the latest regulatory guidance to help ensure the sites are stabilized in compliance with the Act and the NPDES Permits. The LIA or owner of such property should contact GSWCC for technical guidance on implementing the correct BMPs. Common BMP's on such sites include, but are not limited to, sediment barriers (perimeter control), sediment storage, temporary and permanent vegetation.

THE MANUAL

This Manual has been assembled to provide guidance in the implementation of Act 599. It was written for four specific audiences.

1. The land disturbers: landowners, developers and their consultants, architects, engineers, land surveyors, planners, etc.
2. The enforcers: officials and employees of local units of government charged with responsibility of administering and enforcing the law on a local level and the Georgia Environmental Protection Division when it is the issuing authority.
3. The plan reviewers: the Georgia Soil and Water Conservation Districts and Local Issuing Authorities.
4. The design professionals.