

UNDERSTANDING PERMITS

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NPDES PERMIT FOR STORM WATER DISCHARGES

NPDES PERMIT

ASSOCIATED WITH CONSTRUCTION ACTIVITY FOR COMMON DEVELOPMENTS

Section 402 of the Clean Water Act prohibits the discharge of pollutants from a point source into waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit or in violation of a NPDES permit. Discharges associated with construction and industrial activities, including clearing, grading, and excavation **of at least one acre** require a storm water discharge permit under the Clean Water Act's National Pollutant Discharge Elimination System. 40 C.F.R. §§ 122.26(b)(14)(x); 122.26(b)(15); 33 U.S.C. §§ 1311, 1342.

In Georgia, stormwater discharges associated with such construction activities are regulated by a general permit. The permit, "Georgia Environmental Protection Division Authorization to Discharge under the NPDES, Storm Water Discharges Associated With Construction Activity for Common Developments, General Permit No. GAR 100003," became effective as of August 13, 2003 (hereinafter referred to as the "General Permit"). A developer permitted under GAR 100003 has continuing liability for any violations of the General Permit until a Notice of Termination has been submitted to EPD. GAR 100003, Part(I)(E).

The General Permit requires the submittal of a Notice of Intent (NOI) at least fourteen days prior to the commencement of construction activities. GAR 100003 Part II (A). The General Permit also specifies that best management practices, to prevent or reduce pollution, must be properly implemented for all construction activities. GAR 100003, Part III(C)(1)&(2). Where best management practices have not been properly designed, installed, and maintained, it is a violation of the General Permit for each day that those BMPs are not properly designed, installed, and maintained. In addition, when BMPs are not properly designed, installed, or maintained, it is a second violation on each day that discharges increase turbidity by more than 25 nephelometric turbidity units. GAR 100003, Part III(C)(3). The General Permit also requires monitoring and reporting following qualifying events. GAR 100003, Part IV (D)(5) & (E).

In addition, the General Permit specifies that discharges shall not cause violations of water quality standards. GAR 100003, Part I(C)(4). The following are just some of the applicable state water quality standards:

- Ga. Comp. R. & Regs. 391-3-6-.03(5)(b), which states that "[a]ll waters shall be free from ... floating debris ... in amounts sufficient to be unsightly or to interfere with legitimate water uses";
- Ga. Comp. R. & Regs. 391-3-6-.03(5)(c), which states that "[a]ll waters shall be free from material ... which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses";
- Ga. Comp. R. & Regs. 391-3-6-.03(5)(d), which states that "[a]ll waters shall be free from turbidity which results in a substantial visual contrast in a water body due to man-made activity"; and
- Ga. Comp. R. & Regs. 391-3-6-.03(2)(b) and 40 C.F.R. § 131.12(a)(1), which state that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."



GET THE DIRT OUT

Erosion + Sediment Control

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ASSOCIATED WITH CONSTRUCTION ACTIVITY FOR COMMON DEVELOPMENTS CONT'D

The general permit further requires an Erosion, Sedimentation and Pollution Control Plan (ESPCP or the Plan) which shall include, at a minimum, best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with the Manual for Erosion and Sediment Control in Georgia. GAR 100003, Part IV. The Plan must include provisions to retain sediments on site and preclude sedimentation of adjacent waters. GAR 100003, Part IV. The Plan must include provisions for adequate sediment control basins, with storage of at least 1800 cubic feet (67 cubic yards) per acre drained. GAR 100003, Part IV(D)(2)(a)(3).

There are layers of laws and regulations that govern construction activities in Georgia including federal law and regulations, state law and regulations and local ordinances. In addition, the Green Book is specifically incorporated into the General Permit and, as such, has the force of law. A developer must comply with *all* of these laws and regulations. However, in resolving ambiguities between these regulations and laws, **federal law always trumps state and local law, and state law always trumps local law. However, if local or state law is more stringent, then the developer must comply with *the most stringent* requirement.** ○



Keeping Watch Over Our Waters

