

ENFORCEMENT

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AUTHORITY TO INTERPRET AND ENFORCE THE CLEAN WATER ACT

INTERPRET CWA

The ultimate authority for implementation of the Clean Water Act (CWA) remains at all times with the U.S. Environmental Protection Agency (EPA).¹ In Georgia, day-to-day oversight of the CWA has been delegated to EPD. In addition, with respect to the general construction permit, state law has delegated some of the duties to “Local Issuing Authorities” or “LIAs” which are typically county entities. However, EPD and EPA always retain authority over implementation of the permit. The Army Corps of Engineers has authority over Section 404 of the Clean Water Act (dredge/fill permits).

LIAs: In order to be qualified to oversee implementation of the General Permit, the LIA must be certified and adopt an ordinance which meets basic requirements of the law by July 2004. If LIA fails to enforce or adhere to State erosion and sedimentation control laws they may be de-certified as an LIA.

The LIA can issue warnings and stop work orders. In fact, under many circumstances, the LIA is *required* to take action. For example, the LIA is required to issue written warnings for the 1st and 2nd violations (whereby the violator has 5 days to correct the violation). If the violations are not corrected, the LIA *must* issue a stop work order. **Mandatory** stop work orders are also required for actions taken without a permit, where significant amounts of sediment have been or are being discharged in to the water, where the permittee has failed to maintain a stream buffer, or where BMPs not properly maintained or designed. The LIA can also issue penalties of up to \$2,500 per day.

EPA and EPD: EPA and EPD also have authority to take action under the CWA general enforcement powers and in fact, *always* retain authority over its implementation. Actions can include penalties up to \$27,500 per day.

The Army Corps of Engineers: Authority for implementation of Section 404 of the Clean Water Act remains with the Army Corps of Engineers.

Citizens: Where the appropriate agencies have failed to act, the CWA specifically grants citizens the right to enforce all of the requirements of the General Permit and other provisions of the Clean Water Act. A citizen must provide 60-days notice of his/her intent to sue after which time it can file suit. A citizen can seek specific orders that the site comply with law or that remedial measures be taken. He/she can also obtain penalties of up to \$27,500 per day and attorneys’ fees. ☐

¹ There are several laws that govern construction activities: The Clean Water Act, the Georgia Erosion and Sedimentation Act, and local ordinances. The requirements of the state Georgia Erosion and Sedimentation Act and Section 402 of the Clean Water Act have, for the most part, been incorporated into the General Permit. Section 404 of the Clean Water Act is not included in the permit and is implemented solely by the Army Corps of Engineers. Local ordinances must also be followed.

