

9-1-2003

## SOIL AND WATER CONSERVATION Control of Soil Erosion and Sedimentation: Amend Duties of State Authorities; Revise State Control of Erosion and Sedimentation

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### Recommended Citation

Amy McMorrow, *SOIL AND WATER CONSERVATION Control of Soil Erosion and Sedimentation: Amend Duties of State Authorities; Revise State Control of Erosion and Sedimentation*, 20 GA. ST. U. L. REV. (2003).

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## SOIL AND WATER CONSERVATION

### *Control of Soil Erosion and Sedimentation: Amend Duties of State Authorities; Revise State Control of Erosion and Sedimentation*

CODE SECTIONS: O.C.G.A. §§ 2-6-27, 12-5-23, -30, 12-7-1 to -19 (amended), -20 to -22 (new)

BILL NUMBER: HB 285

ACT NUMBER: 36

GEORGIA LAWS: 2003 Ga. Laws 224

SUMMARY: The "Act establishes an education program for persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity, to be administered by the State Soil and Water Conservation Commission. The Act extensively revises [Code] Chapter 12-7, the 'Erosion and Sedimentation Act of 1975.'"<sup>1</sup> Among other changes to Code Chapter 12-7, the Act authorizes a new state-imposed permit fee of up to \$80 per acre of disturbed land, establishes a Stakeholder Advisory Board to work in collaboration with the Environmental Protection Division and the Soil Conservation Commission, and authorizes a study to evaluate the effectiveness of erosion and sedimentation control measures currently employed by the State of Georgia.

EFFECTIVE DATE: July 1, 2003

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1. LEGISLATIVE SERVICES COMMITTEE, SUMMARY OF GENERAL STATUTES ENACTED AT THE 2003 SESSION OF THE GENERAL ASSEMBLY OF GEORGIA 6.

## History

Alongside chemical pollutants, soil erosion from agricultural and other land-disturbing activities such as land development is a major source of water pollution in Georgia's streams and waterways.<sup>2</sup> Through studies of nonpoint sources of water pollution, the Federal Environmental Protection Agency ("EPA") has found that runoff from farms, city streets, and construction sites poses a greater threat to the waters of the United States than discrete point sources such as sewage plant discharges.<sup>3</sup> Accordingly, in his 1998 Clean Water Action Plan, former President Bill Clinton considered runoff the most critical factor affecting water quality across the nation.<sup>4</sup> However, because erosion and sedimentation can so negatively impact water quality, the regulation of erosion-causing activities presents an opportunity for effective abatement of the harm. According to the EPA, soil retention and control of runoff can reduce "sedimentation and erosion caused by agriculture and animal husbandry practices . . . by [20%] to [90%]."<sup>5</sup>

The Georgia Erosion and Sedimentation Act of 1975 ("GESA") regulates erosion of soil from construction development and other land-disturbing activities.<sup>6</sup> GESA requires a developer to obtain a permit for most land-disturbing projects and limits the amount of sediment that a developer can allow to reach nearby streams and waterways.<sup>7</sup> Officials have traditionally enforced discharge limits by measuring relative turbidity levels in the state's waterways.<sup>8</sup> To determine when a violation occurred, officials had to acquire and maintain baseline data regarding the natural turbidity of the waterway in a particular area.<sup>9</sup> The labor-intensive nature of this regime and its

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2. See Josh Marks, *Regulating Agricultural Pollution in Georgia: Recent Trends and the Debate Over Integrator Liability*, 18 GA. ST. U. L. REV. 1031, 1036-37 (2002).

3. See Dianne K. Conway, *TMDL Litigation: So Now What?*, 17 VA. ENVTL. L.J. 83, 114-15 (1997).

4. See Marks, *supra* note 2, at 1048.

5. Conway, *supra* note 3, at 88 (citing U.S. Envtl. Prot. Agency, EPA-841-F-96-004F, *Nonpoint Pointers*, Pointer No. 6: Managing Nonpoint Source Pollution from Agriculture 2 (1996)).

6. See 1975 Ga. Laws 994 (formerly found at O.C.G.A. §§ 12-7-1 to -18 (2002)).

7. See 1975 Ga. Laws 994 (formerly found at O.C.G.A. §§ 12-7-6 to -7 (2002)); Mark A. McCarty, *Review of Selected 1995 Georgia Legislation*, 12 GA. ST. U. L. REV. 39, 39-40 (1995). Exemptions from the permit requirements appear in Code section 12-7-17. See 1975 Ga. Laws 994 (formerly found at O.C.G.A. § 12-7-17 (2002)).

8. McCarty, *supra* note 7, at 40.

9. *Id.*

limited potential to catch only those violations that have already occurred made effective enforcement difficult.<sup>10</sup>

In addition, because federal law considers storm water discharges of soil and sediment to be pollutants, the same developer who is required to secure a GESA permit for his land-disturbing activity must also obtain a permit under the Federal Clean Water Act ("CWA").<sup>11</sup> The CWA regulates discharges of pollutants into waters of the United States through the National Pollutant Discharge Elimination System ("NPDES"), a federal permitting program administered by states that have adopted an EPA-approved state permitting program.<sup>12</sup> The EPA granted the State of Georgia this federal permitting authority on June 28, 1974.<sup>13</sup>

Although Georgia has had federal permitting authority since 1974, the CWA's federal NPDES permitting program did not regulate soil and sediment until 1987 when Congress amended the CWA to add storm water discharges to the list of pollutants that require NPDES permits.<sup>14</sup> At that point, both state and federal statutory authorities directly regulated erosion- and sediment-causing activities.

The Federal CWA limits the extent of permissible erosion and sedimentation from a point source into navigable waters of the United States, and individual states' statutes and enforcement programs must impose rules and regulations conforming to those federal standards.<sup>15</sup> The states may go further in regulating themselves but may not weaken or disregard the federal standards.<sup>16</sup>

In addition, under the CWA, a state can adopt a general storm water NPDES permit that, instead of applying to one specific

10. *Id.*

11. Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (codified at 33 U.S.C. §§ 1251-1387 (1988)); Pub. L. No. 100-4, 101 Stat. 7 (1987) (codified at 33 U.S.C. § 1342 (1988)) (placing storm water discharge under the CWA's jurisdiction).

12. McCarty, *supra* note 7, at 40-41.

13. *See id.* at 41.

14. *Id.* at 41.

15. *See* 33 U.S.C. §§ 1251, 1342 (2003); *see also* Audio Recording of Senate Proceedings, Apr. 10, 2003 (remarks by Sen. Casey Cagle), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter Senate Audio].

16. *See* 33 U.S.C. § 1342 (2003); Senate Audio, *supra* note 15 (remarks by Sen. Casey Cagle). Furthermore, Georgia's Attorney General has interpreted GESA to withhold from local governments the authority to regulate land-disturbing activities specifically excluded from regulation under GESA. 1987 Ga. Op. Att'y Gen. 47, Op. No. 87-20 (1987), available at 1987 WL 119579.

discharger, applies to an entire class of dischargers.<sup>17</sup> In order to discharge up to the limits of that permit, an individual discharger would then apply to the state permitting authority (in Georgia, the Environmental Protection Division (“EPD”)) with a Notice of Intent.<sup>18</sup> However, Georgia was unable to adopt a general permit for storm water discharges from construction activities for nearly a decade during the 1990s because of repeated legal challenges to the proposed general permits mounted by concerned citizens.<sup>19</sup>

In 1995, the Georgia General Assembly removed the numeric turbidity limits from GESA and granted broad discretion to the EPD to either apply effluent limitations or to require best management practices.<sup>20</sup> Therefore, GESA currently requires parties engaging in land-disturbing activities to employ best management practices, including sound conservation and engineering practices, to prevent and to control erosion and sedimentation output into Georgia’s waterways.<sup>21</sup> The use of best management practices is a complete defense to any allegation of noncompliance with GESA or with a permit properly issued under GESA.<sup>22</sup>

In addition, in 2001, the General Assembly created the Environmental Training Education Authority to provide training and certification to make individuals proficient in designing and implementing best management practices under GESA.<sup>23</sup>

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17. See *Driscoll v. Adams*, 181 F.3d 1285, 1288 (11th Cir. 1999). Any general permit issued by Georgia officials must incorporate state-mandated limitations, even if they are more stringent than federal limits. See *McCarty*, *supra* note 7, at 42.

18. See *McCarty*, *supra* note 7, at 42.

19. See Interview with Alice Champagne, Water Protection Specialist, Upper Chattahoochee Riverkeeper (Apr. 17, 2003) [hereinafter *Champagne Interview*]; see, e.g., *Hughey v. Reheis*, No. OSAH-DNR-WQ-AH-97-21, 1998 Ga. ENV LEXIS 7 (Ga. Bd. of Natural Res. Apr. 28, 1998). Phase I of Georgia’s general NPDES permit finally became effective on August 1, 2000 and regulated construction activities affecting between 5 and 250 acres. In August 2003, EPD succeeded in issuing a series of three general NPDES permits covering three different types of construction activity: stand-alone construction activity (GAR100001), infrastructure construction sites (GAR100002), and common development construction (GAR100003). All three permits became effective on August 13, 2003 and are scheduled to expire on July 31, 2008. See Georgia Environmental Protection Division, *Fact Sheet: National Pollutant Discharge Elimination System General Permit Numbers GAR100001, GAR100002, and GAR100003 for Storm Water Discharges Associated with Construction Activity* (June 26, 2003), available at <http://www.ganet.org/dnr/environ/>.

20. 1995 Ga. Laws 150, § 2 (formerly found at O.C.G.A. § 12-7-6 (2002)); *McCarty*, *supra* note 7, at 42-43.

21. See 1995 Ga. Laws 150, § 2 (formerly found at O.C.G.A. § 12-7-6 (2002)).

22. See Water Use Classifications and Water Quality Standards, GA. COMP. R. & REGS. 391-3-6.03(5) (2003); Violations and Defenses, 9 GA. JUR. ENVTL. L. § 10:9 (Aug. 2003).

23. See 2001 Georgia Legislation Final Report, 12 No. 10 GA. ENV. L. LETTER 1 (Apr. 2001).

The NPDES General Permit Advisory Committee initiated a series of stakeholder meetings that resulted in HB 285.<sup>24</sup> Through these meetings, the Committee intended to evaluate the state permit system and make necessary revisions.<sup>25</sup> Instead, the Committee realized that GESA and its state permitting program under the Federal CWA inconsistently overlapped insofar as the state was able to delegate enforcement of GESA to local officials but could not delegate enforcement of the CWA to them.<sup>26</sup> Consequently, the Georgia Department of Natural Resources (“DNR”) requested an audit of the state sedimentation control program, and HB 285 resulted from that audit process.<sup>27</sup>

Over two years of stakeholder meetings ensued, involving homebuilders, municipalities, environmentalists, the Georgia Department of Transportation, and the Soil and Water Conservation Commission, among others.<sup>28</sup> Although often at odds on other issues, the stakeholders found a common purpose in the overhaul of Georgia’s erosion control legislation and put forth a good faith effort to do so.<sup>29</sup> In large part because the affected groups were able to reach a consensus, the legislation was not highly contested once it was introduced to the General Assembly.<sup>30</sup>

### *HB 285*

HB 285 was originally introduced to the House on February 4, 2003.<sup>31</sup> After the Speaker assigned it to the Natural Resources and Environment Committee, the Committee considered the bill and favorably reported a substitute to the House on February 27, 2003.<sup>32</sup> The House Committee substitute added, as one of the bill’s purposes, “to provide for the effect of such provisions on the practice of land

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24. See Champagne Interview, *supra* note 19.

25. *Id.*

26. See *id.*

27. See *id.*

28. See Senate Audio, *supra* note 15 (remarks by Sen. Casey Cagle).

29. See Tom Barry, *Disparate Groups' Compromise Regulates Runoff*, ATLANTA BUS. CHRON., May 5, 2003, at 2C.

30. See Interview with Rep. Jim Stokes, House District No. 72 (Apr. 17, 2003) [hereinafter Stokes Interview].

31. See State of Georgia Final Composite Status Sheet, HB 285, Apr. 25, 2003.

32. See *id.*

surveyors in performing certain tasks related to soil erosion and sedimentation control.”<sup>33</sup>

The House Committee also proposed adding new Code subsection § 12-7-3(9.1) to define “larger common plan of development or sale,” as well as new Code subsection 12-7-3(10.1) to define “operator.”<sup>34</sup> The House Committee changed the bill’s language to refer to the newly defined “larger common plan” in Code subsections 12-7-6(2), 12-7-17(4), 12-7-17(8), 12-7-17(9), and 12-7-17(10).<sup>35</sup> The House Committee changed the bill’s language to refer to the newly defined operator in Code subsection 12-7-7(a).<sup>36</sup> Also in the definitions section, the House Committee removed the original bill’s addition of “coastal marshlands or marshlands or estuarine areas as defined in Code [s]ection 12-5-282.”<sup>37</sup>

The House Committee removed the original bill’s specific directions for measuring the requisite 25-foot buffer from marshlands, in particular, and reverted to the former, more general language found in Code subsection 12-7-6(15).<sup>38</sup> In addition, the House Committee specifically exempted cable television systems, as defined by Code section 36-18-1, from this Chapter’s requirements.<sup>39</sup> The House Committee also removed the exemption for public water system reservoirs where “an existing impoundment built for hydroelectric power generation when at full level is within a distance of five miles downstream from the dam of such public water system reservoir.”<sup>40</sup>

Lastly, the House Committee would have added new Code section 12-7-23, which explicitly states that the bill is not designed to affect

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33. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

34. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

35. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

36. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

37. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

38. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

39. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

40. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

registered land surveyors carrying out land surveying practices in accordance with their profession.<sup>41</sup> However, the substitute bill requires all of these land surveyors to comply with the new education and training certification requirements set forth in Code section 12-7-19.<sup>42</sup>

The House passed a floor amendment to the Committee substitute on March 4, 2003.<sup>43</sup> The bill's sponsor, Representative Jim Stokes of the 72nd district, introduced the House floor amendment.<sup>44</sup> The Subcommittee developed the amendment during a hearing, responding to concerns that surveyors would be cut out of the process and the additional concern of engineers that the language employed was too broad.<sup>45</sup> The amendment explicitly stated that HB 285 does not affect the current professional roles of engineers or surveyors.<sup>46</sup> The amended HB 285 passed the House by a vote of 166 to 3.<sup>47</sup>

On March 5, 2003, the bill was read for the first time in the Senate and assigned to the Natural Resources and Environment Committee.<sup>48</sup> On March 28, 2003, the Senate Committee favorably reported the bill, and the Senate passed HB 285 by a vote of 44 to 3 on April 10, 2003.<sup>49</sup> The Senate passed the bill with a floor amendment that restored the bill's original language regarding the exemption for public water system reservoirs.<sup>50</sup> Through its substitute, the House had qualified the exemption for public water system reservoirs, and the Senate floor amendment restored the full exemption.<sup>51</sup> The language added by the House concerned some Senators, and Senator Casey Cagle of the 49th district, the Amendment's sponsor, convinced the Senate to eliminate it.<sup>52</sup>

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41. Compare HB 285, as introduced, 2003 Ga. Gen. Assem., with HB 285 (HCS), 2003 Ga. Gen. Assem.

42. See HB 285 (HCS), 2003 Ga. Gen. Assem.

43. See State of Georgia Final Composite Status Sheet, HB 285, Apr. 25, 2003.

44. See Audio Recording of House Proceedings, Mar. 4, 2003 (remarks by Rep. Jim Stokes), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter House Audio].

45. See *id.*

46. See *id.*

47. Georgia House of Representatives Voting Record, HB 285 (Mar. 4, 2003).

48. See State of Georgia Final Composite Status Sheet, HB 285, Apr. 25, 2003.

49. See *id.*; Georgia Senate Voting Record, HB 285 (Apr. 10, 2003).

50. See HB 285 (SFA), 2003 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 285, Apr. 25, 2003.

51. Compare HB 285 (HCS), 2003 Ga. Gen. Assem., with HB 285 (SFA), 2003 Ga. Gen. Assem.

52. See Senate Audio, *supra* note 15 (remarks by Sen. Casey Cagle); Georgia Senate Voting Record, HB 285 (Apr. 10, 2003).



Senator Joey Brush of the 24th district attempted to amend the bill to clarify the term “a significant amount of sediment” as used in Code subsection 12-7-12(d) because he felt that the language granted inspectors too much discretion in issuing stop work orders.<sup>53</sup> He asked the Senate to remove inspectors’ authority to issue stop work orders where “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.”<sup>54</sup> His amendment would have effectively granted local issuing authorities the discretion to issue stop work orders only when an actor acted without a permit or failed to maintain a stream buffer.<sup>55</sup> Senator Cagle responded by encouraging the Senators to not micro-manage at the 11th hour, especially in light of the extensive stakeholder input that created this bill.<sup>56</sup> Senator Brush’s amendment was eventually lost.<sup>57</sup>

On April 22, 2003, the House agreed to the Senate’s changes to HB 285 and sent the bill to Governor Sonny Perdue for his signature on May 7, 2003.<sup>58</sup> The Governor signed the bill into law on May 27, 2003.<sup>59</sup>

### *The Act*

The Act amends the duties of the Board of Natural Resources, the Soil and Water Conservation Commission, and the Director of the EPD as outlined below.

#### *Code Section 2-6-27*

Section 1 of the Act adds Code subsection 2-6-27(7.1).<sup>60</sup> Subsection 7.1 adds a new responsibility to the roster currently managed by the State Soil and Water Conservation Commission.<sup>61</sup>

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53. See Senate Audio, *supra* note 15 (remarks by Sen. Joey Brush).

54. See Failed Senate Floor Amendment to HB 285, introduced by Sen. Joey Brush, Apr. 10, 2003; Senate Audio, *supra* note 15 (remarks by Sen. Joey Brush).

55. See Failed Senate Floor Amendment to HB 285, introduced by Sen. Joey Brush, Apr. 10, 2003; Senate Audio, *supra* note 15 (remarks by Sen. Joey Brush).

56. See Senate Audio, *supra* note 15 (remarks by Sen. Casey Cagle).

57. See Georgia Senate Voting Record, HB 285 (Apr. 10, 2003).

58. See State of Georgia Final Composite Status Sheet, HB 285, Apr. 25, 2003.

59. See *id.*

60. See O.C.G.A. § 2-6-27(7.1) (Supp. 2003).

61. See *id.*

The Commission is now responsible for implementing the education program newly established by the Act and for formulating the rules and regulations necessary to do so.<sup>62</sup>

*Code Section 12-5-23*

Similarly, section 2 of the Act amends the powers and duties of the Board of Natural Resources and the Director of its Environmental Protection Division.<sup>63</sup> The Act requires the Board to establish the rules and regulations that will create a fee system designed to offset the costs of state implementation of the NPDES general permit for storm water runoff caused by construction and development activities.<sup>64</sup> The Act requires the Board to assess fees that are sufficient to cover the state's compliance with the Georgia Erosion and Sedimentation Act but that will not exceed \$80.00 per acre of land-disturbing activity.<sup>65</sup> The fees are expected to generate \$5.3 million and will be used to hire roughly 80 new inspectors.<sup>66</sup>

Section 3 of the Act further amends Code paragraph 12-5-23(c)(15) to require the Director of the EPD to administer the fee program developed by the Board pursuant to section 2 of the Act.<sup>67</sup>

*Code Section 12-5-30*

Section 4 of the Act adds new Code subsection 12-5-30(g) to express the State of Georgia's public policy with regard to the management of water pollution.<sup>68</sup> Through this subsection, the General Assembly has pledged to "prevent or mitigate where possible discharges of sediment into the waters of the state" and to use funds

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62. *See id.*; *see also* O.C.G.A. § 12-7-19 (Supp. 2003).

63. *Compare* 2001 Ga. Laws 892, § 2 (formerly found at O.C.G.A. § 12-5-23 (2001)), *with* O.C.G.A. § 12-5-23 (Supp. 2003).

64. *Compare* 2001 Ga. Laws 892, § 2 (formerly found at O.C.G.A. § 12-5-23 (2001)), *with* O.C.G.A. § 12-5-23 (Supp. 2003).

65. *Compare* 2001 Ga. Laws 892, § 2 (formerly found at O.C.G.A. § 12-5-23 (2001)), *with* O.C.G.A. § 12-5-23 (Supp. 2003).

66. Georgia House of Representatives, Weekly Wrap-Up Report #7 (2003).

67. *Compare* 1996 Ga. Laws 255, § 1, at 260 (formerly found at O.C.G.A. § 12-5-23(c)(15) (2002)), *with* O.C.G.A. § 12-5-23(c)(15) (Supp. 2003).

68. *See* O.C.G.A. § 12-5-30(g) (Supp. 2003).

acquired through the permit program solely for the administration of GESA and the state general permit.<sup>69</sup>

*Code Sections 12-7-1 to 12-7-22*

The Act also significantly amends GESA. The Act adds definitions in Code section 12-7-3 for the terms “larger common plan of development or sale,” “local issuing authority,” “operator,” “qualified personnel,” and “state general permit,” and it deletes the definition of “issuing authority.”<sup>70</sup>

The Act preserves the ability of design professionals, including but not limited to professional engineers, registered land surveyors, and Natural Resource Conservation Service employees, to carry out their professional services, as long as they meet the qualifications for their profession outlined in Code Title 43 and comply with the training requirements set forth in Code section 12-7-19.<sup>71</sup>

The Act provides an exemption for “land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for this construction is equal to or greater than five acres.”<sup>72</sup> The Act further specifies that the best management practices required by rules and regulations governing land-disturbing activity must also be “at least as stringent as the state general permit.”<sup>73</sup> In addition, the Act provides for conditional exceptions to the 25- and 50-foot buffer regulations for water and sewer line stream crossings.<sup>74</sup>

The Act sets forth the roles of the local issuing authorities, the primary permittees, and the secondary permittees in the management

69. *See id.*

70. *Compare* 2000 Ga. Laws 1430, § 1 (formerly found at O.C.G.A. § 12-7-3 (2002)), *with* O.C.G.A. § 12-7-3 (Supp. 2003).

71. *Compare* 1975 Ga. Laws 999 (formerly found at O.C.G.A. § 12-7-4 (2002)), *with* O.C.G.A. § 12-7-4 (Supp. 2003).

72. *Compare* 1995 Ga. Laws 150, § 2, at 151 (formerly found at O.C.G.A. § 12-7-6(a)(2) (2002)), *with* O.C.G.A. § 12-7-6(a)(2) (Supp. 2003).

73. *Compare* 1995 Ga. Laws 150, § 2, at 152 (formerly found at O.C.G.A. § 12-7-6(b) (2002)), *with* O.C.G.A. § 12-7-6(b) (Supp. 2003).

74. *Compare* 2000 Ga. Laws 1432, § 2 (formerly found at O.C.G.A. § 12-7-6(b)(15) to (16) (2002)), *with* O.C.G.A. § 12-7-6(b)(15) to (16) (Supp. 2003).

of erosion and sedimentation.<sup>75</sup> It requires local issuing authorities to enact ordinances for the control of erosion and sedimentation which meet or exceed GESA standards and CWA state general permit standards, while prohibiting local issuing authorities from enacting requirements for “monitoring, reporting, inspections, design standards, turbidity standards, and education and training” that exceed the state general permit requirements.<sup>76</sup> The Act further requires the Board of Natural Resources to promulgate rules and regulations regarding the certification of local issuing authorities.<sup>77</sup>

The Act authorizes local issuing authorities to issue stop work orders upon discovering a violation of GESA such as “taking action without a permit, fail[ing] to maintain a stream buffer, . . . [discharging] significant amounts of sediment into state waters,” and not properly designing, installing, and maintaining best management practices.<sup>78</sup> A stop work order shall remain in effect until the corrective or mitigating measures are in place.<sup>79</sup>

The Act eliminates the specific penalty provisions and factors a hearing officer must consider while maintaining the cap on civil penalties for violations of this chapter at \$2500 per day.<sup>80</sup>

To the exemptions listed in Code section 12-7-17, the Act imposes specific conditions upon projects undertaken in whole or in part by the Department of Transportation, the Georgia Highway Authority, the State Road and Tollway Authority, or various utilities.<sup>81</sup>

The Act also sets a deadline of December 31, 2006 for erosion and sedimentation professionals’ compliance with the new training and education requirements, as set forth in the Act.<sup>82</sup> In addition, it requires the Soil Conservation Commission to develop a minimum of

75. Compare 1994 Ga. Laws 1657 (formerly found at O.C.G.A. § 12-7-8(a) (2002)), with O.C.G.A. § 12-7-8(a) (Supp. 2003).

76. Compare 1994 Ga. Laws 1657 (formerly found at O.C.G.A. § 12-7-8(a) (2002)), with O.C.G.A. § 12-7-8(a) (Supp. 2003).

77. Compare 1994 Ga. Laws 1658 (formerly found at O.C.G.A. § 12-7-8(b) (2002)), with O.C.G.A. § 12-7-8(c) (Supp. 2003).

78. See O.C.G.A. § 12-7-12(d) (Supp. 2003).

79. See *id.*

80. Compare 1980 Ga. Laws 942, § 9, at 949 (formerly found at O.C.G.A. § 12-7-15(b) to (c) (2002)), and 2000 Ga. Laws 1430, § 4, at 1434 (formerly found at O.C.G.A. § 12-7-15(a) (2002)), with O.C.G.A. § 12-7-15 (Supp. 2003).

81. Compare 2000 Ga. Laws 1673, § 2, at 1676 (formerly found at O.C.G.A. § 12-7-17(a)(8) (2002)), and 2000 Ga. Laws 1430, at 1435 (formerly found at O.C.G.A. § 12-7-17(a)(1) to (10) (2002)), with O.C.G.A. § 12-7-17(1) to (11) (Supp. 2003).

82. See O.C.G.A. § 12-7-19 (Supp. 2003).

two training program levels and sets minimum qualifications for individuals involved in the field of erosion and sedimentation control which are tailored to the specific positions held by these individuals.<sup>83</sup>

Furthermore, the Act calls for the formal establishment of a 13-member Stakeholder Advisory Board to work with the EPD and the Soil Conservation Commission and sets forth the powers and duties of the Board.<sup>84</sup> The Act directs the Board of Natural Resources to appoint a panel to study the effectiveness of the control measures implemented through GESA, including practice standards and turbidity measurements.<sup>85</sup> The panel must present a report to the General Assembly within three years of the Act's effective date.<sup>86</sup> Finally, the Act calls on the EPD and the DNR's Pollution Prevention Assistance Division to implement an electronic filing and reporting system to achieve "efficiencies and economies for both the Division and the regulated community."<sup>87</sup>

*Amy Pilat McMorrow*

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83. See O.C.G.A. § 12-7-19 (Supp. 2003).

84. See O.C.G.A. § 12-7-20 (Supp. 2003).

85. See O.C.G.A. § 12-7-21 (Supp. 2003).

86. See *id.*

87. See O.C.G.A. § 12-7-22 (Supp. 2003).