

GEORGIA

Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Georgia's water pollution control law authorizes a permit program to control nonpoint sources that may impair water quality. It also includes a separate provision allowing the state to recover damages for intentional or negligent discharges (including nonpoint point source discharges) resulting in a polluted condition, or that consist of particularly harmful substances in harmful amounts.

- Georgia law requires a permit for anyone seeking to "erect or modify facilities or commence or alter an operation of any type which will result in the discharge of pollutants from a nonpoint source into the waters of the state, which will render or is likely to render such waters harmful to the public health, safe, or welfare, or harmful or substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other lawful uses, or for animals, birds, or aquatic life."¹ The regulations limit this provision. They require only "written approval" and use of BMPs "under the circumstances described" in the statute, but not application for or issuance of a permit unless the Director of the Environmental Protection Division (EPD) "has issued one to the same person for a point source discharge."² Injunctive relief and civil penalties of up to \$50,000 per day are provided for, as are criminal penalties of \$2,500 to \$25,000 and/or imprisonment.³

- A person who "intentionally or negligently causes or permits any sewage, industrial wastes, or other wastes, oil, scum, floating debris, or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution . . . shall be liable in damages . . . for any and all costs, expenses, and injuries." The amount of damages includes costs of abatement and "expenses reasonably incurred in replacing aquatic life."⁴ A person who "intentionally, negligently, or accidentally causes or permits any toxic, corrosive, acidic, caustic, or bacterial substance or substances to be spilled, discharged, or deposited" in harmful amounts is strictly liable.⁵

Other Discharge Limitations

- Nuisance law also applies to water pollution.⁶ But agricultural facilities may not be deemed a nuisance based on changed conditions; however, the exemption is not available if the nuisance results from a negligent, improper, or illegal operation.⁷

Fish/Fisheries Laws

- It is unlawful to "throw, dump, drain, or allow to pass into any waters of this state which belong to the department or which are being utilized by the department for fish propagation any sawdust, dyestuff, oil, chemicals, or other deleterious substances

that will or may tend to injure, destroy, or drive away from such waters any fish or aquatic organisms which may inhabit such waters." Damages are available for unlawful or negligent injury or destruction of fish; the measure of damages is the "amount which will compensate for all the detriment proximately caused by the destruction or injury of such fish or aquatic organism."⁸ In addition, any person who takes wildlife in violation of the Game and Fish Code is guilty of the offense of theft by taking.⁹ Civil penalties are available up to \$1,000 per violation, administrative orders and enforcement of administrative orders in superior court are available, as is misdemeanor prosecution.¹⁰

OPERATIONAL REQUIREMENTS

Forestry Requirements

Georgia's forestry laws do not appear to contain enforceable provisions relating directly to nonpoint source pollution. But Georgia does require registration of professional foresters, with continuing education and relicensing. Forest practices for hire must be conducted by a professional forester.¹¹ Enforcement of licensing requirements include injunction, license revocation, and misdemeanor prosecution.¹²

Agriculture Requirements

- Supervisors of each soil and water conservation district have authority to adopt enforceable regulations "governing the use of lands within the district, in the interest of conserving soil and soil resources and preventing and controlling soil erosion."¹³ District regulations may include: 1) provisions requiring engineering operations, including terrace construction, dams, dikes, etc; 2) provisions requiring particular cultivation methods, including "contour cultivating; contour furrowing; lister furrowing; sowing; planting; strip cropping; changes in cropping systems, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation; and reforestation" and 3) provisions requiring highly erosive areas to be retired from cultivation.¹⁴ However, supervisors may adopt such enforceable regulations only with the approval by referendum of the owners of the lands within the district. The regulations are binding on all landowners within the district.¹⁵ Enforcement is by injunctive relief. If an injunction is not obeyed, the district may go on the land to perform the work and recover its expenses with interest.¹⁶

- It is unlawful to transport, store, or dispose of any pesticide in manner to "cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or in such a manner as to pollute any waterway in a way harmful to any wildlife therein." In determining standards governing the storage and disposal of such pesticides, commissioner shall consider any regulations issued by U.S. EPA or state DNR.¹⁷ Licensing of contractors and applicators is required.¹⁸ Violations of the pesticide statute are enforced by injunction, civil penalty, criminal prosecution, and license revocations/suspensions.¹⁹ However, no one engaged in "agricultural, silvicultural, farming, horticultural, or similar operation . . . who has applied or used or arranged for the application or use of any fertilizer, plant growth regulator, or pesticide" as defined in FIFRA, the Georgia labeling and registration statute, or the Georgia pesticide application statute "shall be responsible or liable under this title, without proof of negligence or lack of due care, for any damages, response costs, or injunctive relief

relating to any direct or indirect discharge or releaser into, or actual or threatened pollution of, the land, waters, air, or other resources of the state that is or may be associated with or resulting from such application of use." The application must have been consistent with the labeling, in accord with acceptable agricultural practices; the item must have been properly licensed or registered. Causes of action against agricultural or farming operations for injury to person or property are not affected.²⁰

- Irrigation systems used for application of fertilizers, pesticides, or chemicals "must be equipped with an anti-siphon device adequate to protect against contamination of the water supply." Enforcement is via administrative order and civil penalty of up to \$1,000.²¹

Development and Other Earth-Disturbing Activities

- Georgia's Erosion and Sediment Control Act establishes a permit process for land-disturbing activities. County and municipalities are directed to adopt comprehensive ordinance to establish procedures governing land-disturbing activities; local authorities may delegate responsibilities to local planning and zoning commission.²² If a county or municipality enacts ordinances that meet or exceed standards and which are enforceable, EPD may certify the local entity to be an "issuing authority."²³ BMPs are required for all land-disturbing activities. BMPs must include "sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation" consistent with a manual published by the soil and water conservation commission, and including specific requirements protecting waters from nonpoint source pollution.²⁴ Permits are not required for some activities, such as construction of individual single-family residences and land-disturbing activities conducted by public utilities so long as they conform to BMPs. Activities on sites of 1.1 acres or less are exempt from both permit and BMP requirements unless they are within 200 feet of lakes or perennial streams. Agriculture and forestry operations are wholly exempt.²⁵ Enforcement is by EPD or the issuing authorities, using administrative orders, injunctions, and civil penalties. Civil penalties for non-certified counties and municipalities are authorized up to \$2,500 per day. Permit revocation, suspension, modification, and bond forfeiture are also enforcement sanctions.²⁶

- Georgia has a river corridor protection law. The DNR is authorized to develop minimum standards for the "protection of the natural resources, environment, and vital areas of the state, including, but not limited to, the protection of mountains, the protection of river corridors, the protection of watersheds of streams and reservoirs which are to be used for public water supply, for the protection of the purity of ground water, and for the protection of wetlands, which minimum standards and procedures shall be used by local governments in developing" comprehensive plans.²⁷ The minimum standards for watershed protection shall include buffer areas along streams and reservoirs, land development densities, and land use activities. Minimum standards for protection of ground water shall include land use activities and development densities. Minimum standards for protection of wetlands shall include land use activities, land development densities, and activities involving alteration of wetlands.²⁸ Standards for protection of river corridors shall include natural vegetative buffer areas for a distance of 100 feet on both sides of stream as measured from stream banks.²⁹ Local governments are mandated to identify existing river corridors and adopt

river corridor protection plans.³⁰ Local governments may exempt certain activities from requirements of river corridor protection plans: existing land uses; permitted mining activities; utilities, from buffer criteria; specific forestry and agricultural activities, from buffer criteria, if activity is consistent with BMPs established by forestry commission or soil and water conservation commission and the activity will not impair drinking quality of stream water.³¹ Enforcement is under local ordinances.

- The Metropolitan River Protection Act requires governing authorities to adopt ordinances protecting the Chattahoochee and its tributaries, including buffer areas prohibiting land-disturbing activities, and soil erosion and sediment provisions consistent with the above Act. Failure to enforce these provisions can give rise to enforcement action by EPD upon request by the Atlanta Regional Commission or Georgia Mountains Regional Development Center.³²

- The Shore Protection Act also provides some authority affecting activities along the shoreline that may result in nonpoint source water pollution. Permitting and other requirements are enforceable by local governments or the state.³³ The Coastal Marshlands Protection Law also provides enforceable mechanisms, including permitting and order authority relevant to some forms of nonpoint source pollution in the estuarine area of the state.³⁴

Endnotes

- ¹ Ga. Code Ann. § 12-5-30(b).
- ² Ga. Comp. R. & Regs. r. 391-3-6-.06(3).
- ³ Ga. Code Ann. §§ 12-5-48, 12-5-52, 12-5-53.
- ⁴ Ga. Code Ann. § 12-5-51(b).
- ⁵ Ga. Code Ann. § 12-5-51(b).
- ⁶ Ga. Code Ann. §§ 41-1-2 to 6.
- ⁷ Ga. Code Ann. § 41-1-7.
- ⁸ Ga. Code Ann. § 27-4-4.
- ⁹ Ga. Code Ann. § 27-1-3(f).
- ¹⁰ Ga. Code Ann. §§ 27-1-36(a), 27-1-37, 27-1-38.
- ¹¹ Ga. Code Ann. § 12-6-42, 12-6-49, 12-6-56, 12-6-61.
- ¹² Ga. Code Ann. § 12-6-60, 12-6-62.
- ¹³ Ga. Code Ann. § 2-6-35.
- ¹⁴ Ga. Code Ann. § 2-6-37(a).
- ¹⁵ Ga. Code Ann. §§ 2-6-36, 2-6-38.
- ¹⁶ Ga. Code Ann. § 2-6-39.
- ¹⁷ Ga. Code Ann. § 2-7-106.
- ¹⁸ Ga. Code Ann. § 2-7-99.
- ¹⁹ Ga. Code Ann. § 2-7-102.
- ²⁰ Ga. Code Ann. § 2-7-170.
- ²¹ Ga. Code Ann. § 2-1-4.
- ²² Ga. Code Ann. § 12-7-4.
- ²³ Ga. Code Ann. § 12-7-8(a).
- ²⁴ Ga. Code Ann. § 12-7-6.
- ²⁵ Ga. Code Ann. § 12-7-17.

- ²⁶ Ga. Code Ann. §§ 12-7-12, 12-7-14, 12-7-15, 12-7-11, 12-7-7.
- ²⁷ Ga. Code Ann. § 12-2-8(b).
- ²⁸ Ga. Code Ann. § 12-2-8(d)-(f).
- ²⁹ Ga. Code Ann. § 12-2-8(g)(1)(A).
- ³⁰ Ga. Code Ann. § 12-2-8(g)(2).
- ³¹ Ga. Code Ann. § 12-2-8(g)(2).
- ³² Ga. Code Ann. § 12-5-453.
- ³³ Ga. Code Ann. §§ 12-5-41, 12-5-235 et seq.
- ³⁴ Ga. Code Ann. § 12-5-282 et seq.