

**GEORGIA EROSION AND SEDIMENTATION ACT OF 1975**

**As Amended Through 2000**

**Abstract From**

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**Conservation and Natural Resources**

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**Revised 10/00**

**12-7-1. Short title.**

This chapter shall be known and may be cited as the "Erosion and Sedimentation Act of 1975, as amended."

**12-7-2. Legislative findings; policy of state and intent of chapter.**

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 sedimentation control activities and programs of this state and to provide for the establishment and implementation of a state-wide comprehensive soil erosion and sedimentation control program to conserve and protect the land, water, air, and other resources of this state.

**12-7-3. Definitions.**

As used in this chapter, the term:

- (1) "Board" means the Board of Natural Resources.
- (2) "Buffer" means the area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.
- (3) "Commission" means the State Soil and Water Conservation Commission.
- (4) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.
- (5) "District" means any one of the soil and water conservation districts of this state.
- (6) "Division" means the Environmental Protection Division of the Department of Natural Resources.
- (7) "Drainage structure" means a device composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.
- (8) "Erosion and sedimentation control plan" or "plan" means a plan for the control of soil erosion and sedimentation resulting from a land-disturbing activity.

(9) "Issuing authority" means the governing authority of any county or municipality which is certified pursuant to subsection (a) of Code Section 12-7-8 and the division in those instances where an application for a permit is submitted to the division.

(10) "Land-disturbing activity" means any activity which may result in soil erosion from water or wind and the movement of sediments into state water or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in paragraph (5) of Code Section 12-7-17.

(11) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this state, any interstate body, or any other legal entity.

(12) "Roadway drainage structure" means a device, such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

(13) "Soil and water conservation district approved plan" means an erosion and sediment control plan approved in writing by a soil and water conservation district.

(14) "State waters" includes any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state, which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

**12-7-4. Adoption of comprehensive ordinances relating to land-disturbing activities; delegation of responsibility to planning and zoning commission.**

The governing authority of each county and each municipality shall adopt a comprehensive ordinance establishing the procedures governing land-disturbing activities which are conducted within their respective boundaries. Such ordinances shall be consistent with the standards provided by this chapter. Local governing authorities shall have the authority, by such ordinance, to delegate in whole or in part the responsibilities of the governing authorities, as set forth in this chapter, to any constitutional or statutory local planning and zoning commission.

**12-7-5. Adoption of rules and regulations for localities without ordinances.**

The board, by appropriate rules and regulations, shall adopt the procedures governing land-disturbing activities which are conducted in those counties and municipalities which do not have in effect an ordinance conforming to this chapter. Such rules and regulations shall be developed by the division in consultation with the commission and shall contain provisions which meet those minimum requirements set forth in Code Section 12-7-6.

**12-7-6. Requirement for Best Management Practices, to include sound conservation and Engineering practices as a minimum.**

(a)(1) Best management practices as set forth in subsection (b) of this Code section shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of OCGA 12-5-30, the “Georgia Water Quality Control Act”. As used in this subsection, the terms "proper design" and "properly designed" mean designed to control soil erosion and sedimentation for all rainfall events up to and including a 25 year rainfall event.

(2) A discharge of storm-water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local issuing authority or by the division or of any general permit for construction activities issued by the division pursuant to subsection (f) of OCGA 12-5-30, the “Georgia Water Quality Control Act”, for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director.

(3) Failure properly to design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or by the division or of any general permit for construction activities issued by the division pursuant to subsection (f) of OCGA 12-5-30, the “Georgia Water Quality Control Act” for each day on which such failure occurs.

(4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

(b) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter for the purpose of governing land-disturbing activities shall require, as a minimum, best management practices, including

sound conservation and engineering practices to prevent and minimize erosion and resultant sediment, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control In Georgia" published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

- (1) Stripping of vegetation, regrading, and other development activities shall be conducted in such a manner so as to minimize erosion;
- (2) Cut and fill operations must be kept to a minimum;
- (3) Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential;
- (4) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;
- (5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
- (6) Disturbed soil shall be stabilized as quickly as practicable;
- (7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
- (8) Permanent vegetation and structural erosion control measures must be installed as soon as practicable;
- (9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this chapter;
- (10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surfaces of fills;
- (11) Cuts and fills may not endanger adjoining property;
- (12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
- (13) Grading equipment must cross flowing streams by the means of ridges or culverts, except when such methods are not feasible, provided, in any case, that such crossings must be kept to a minimum;

(14) Land-disturbing activity plans for erosion and sedimentation control shall include provisions for control or treatment of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (a) of this Code Section;

(15) Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to OCGA 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented; provided, however that buffers of at least 25 feet established pursuant to OCGA 12-5-30, the "Georgia Water Quality Control Act" shall remain in force unless a variance is granted by the director as provided in this paragraph. The following requirements shall apply to any such buffer:

- (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- (B) On or before December 31, 2000, the board shall adopt rules which contain specific criteria for the grant or denial by the director of requests for variances. After such date, no variance shall be granted by the director which is not consistent with the criteria contained in such rules; provided, however, that, should the board fail to adopt rules which contain specific criteria for the granting or denial of requests for variances by the director on or before December 31, 2000, the authority of the director to issue such variances shall be suspended until the board adopts such rules; and

(16) There is established a 50 foot buffer, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to OCGA 12-5-30, the "Georgia Water Quality Control Act" except where a roadway drainage structure must be constructed, provided, however that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board providing for notice to the division or local

issuing authority of the location and extent of the piping and prescribed methodology for minimizing the impact of such piping and for measuring the volume of water discharged by the stream. Any such pipe stops short of the downstream landowner's property and the landowner must comply with the buffer requirement for any adjacent trout streams. The director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to any such buffer:

- (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- (B) On or before December 31, 2000, the board shall adopt rules which contain specific criteria for the grant or denial by the director of requests for variances. After such date, no variance shall be granted by the director which is not consistent with the criteria contained in such rules; provided, however, that, should the board fail to adopt rules which contain specific criteria for the grant or denial or requests for variances by the director on or before December 31, 2000, the authority of the director to issue such variances shall be suspended until the board adopts such rules; and

(c) Nothing contained in this chapter shall prevent an issuing authority from adopting rules and regulations, ordinances, or resolutions which contain requirements that exceed the minimum requirements in subsections (a) and (b) of this Code Section.

(d) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Code Section or the terms of the permit.

**12-7-7. Requirement of permit for land-disturbing activities; approval of application and issuance of permit.**

(a) No land-disturbing activities shall be conducted in this state, except those land-disturbing activities provided for in Code Section 12-7-17, without the property owner where the land-disturbing activity will occur first securing the permit required by this Code Section.

(b) In those counties and municipalities which are certified pursuant to subsection (a) of Code Section

12-7-8:

(1) The application for such permit shall be made to and the permit shall be issued by the governing authority of the county wherein such land-disturbing activities are to occur, in the event that such activities will occur outside the corporate limits of a municipality; and

(2) In those instances where such activities will occur within the corporate limits of any municipality, the application for such permit shall be made to and the permit shall be issued by the governing authority of the municipality in which such land-disturbing activities are to occur.

(c) In those counties and municipalities which are not certified pursuant to subsection (a) of Code Section 12-7-8, the application for such permit shall be made to and the permit shall be issued by the division.

(d) Except as provided in this subsection, no permit shall be issued pursuant to subsection (b) or (c) of this Code section unless the erosion and sedimentation control plan has been approved by the appropriate district as is required by Code Section 12-7-10. When the governing authority of a county or municipality lying within the boundaries of the district demonstrates capabilities to review and approve an erosion and sedimentation control plan and requests an agreement with the district to conduct such review and approval, the district, with the concurrence of the commission, shall enter into an agreement which allows the governing authority to conduct review and approval without referring the application and plan to the district, if such governing authority meets the conditions specified by the district as set forth in the agreement. A district may not enter into an agreement authorized in this Code section with the governing authority of any county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8.

(e)(1) If a permit applicant has had two or more violations of previous permits or this Code Section within three years prior to the date of filing of the application under consideration, the issuing authority may deny the permit application.

(2) The issuing authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this Code Section or with the conditions of the permit after issuance, the issuing authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. This subsection shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the issuing authority with respect to alleged permit violations.

(f) No permit may be issued pursuant to subsection (b) or (c) of this Code Section unless the applicant provides a statement by the tax collector or tax commissioner of the county in which the property for which the permit is requested lies and by the official responsible for the collection of municipal taxes in the municipality within which such property lies, if applicable, certifying that all ad valorem taxes levied against the property and due and owing have been paid.

**12-7-7.1 Requirements for Erosion and Sedimentation Control Plans For Certain Construction or Maintenance Projects of the Department of Transportation or the State Tollway Authority**

(a) As used in this Code Section, the term “contractor” means the individual, firm, corporation, or combination thereof or governmental organization contracting with the Department of Transportation or State Tollway Authority for the performance of prescribed work.

(b)(1) In addition to the requirements of Code Section 12-7-6, the Department of Transportation or the State Tollway Authority after July 1, 2000, shall not contract for land-disturbing activity on any construction or maintenance project that will disturb five or more contiguous acres of land until an erosion and sedimentation control plan for such project has been prepared and accepted pursuant to this Code section.

(2) Through its own forces or by means of the acquisition of professional service pursuant to the provisions of Chapter 22 of Title 50, the Department of Transportation or the State Tollway Authority shall be responsible for the preparation of an erosion and sedimentation and sediment control plan for any construction or maintenance project as required by paragraph (1) of this subsection. Any consultant providing such professional service shall be prequalified by the Department of Transportation as a responsible bidder for the design of erosion and sedimentation control plans. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(c) Upon completion of a proposed plan, the same shall be submitted to the division for review and comment.

(d)(1) All bidders for any construction or maintenance project subject to this Code Section shall review and submit with their bid proposal a cost estimate as a separate bid for the implementation of the plan, it being understood that the contractor may utilize either its own personnel and resources, qualified subcontractors, or both for implementation of the plan. All contractors and subcontractors for such projects shall be prequalified by the Department of Transportation as a responsible bidder for the installation of erosion and sediment control devices in accordance with a plan. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(2) The contractor for a construction or maintenance project subject to this Code Section shall be responsible for implementing the plan on the awarded project. Payment to any contractor under any contract for implementing any part or all of any plan shall not be on a lump sum basis; rather, such payment shall be based upon unit process for specific quantities of work performed pursuant to the approved erosion and sedimentation control plan plus any additional quantities of completed work necessitated by project conditions affecting erosion and sedimentation control, including without limitation soil types and weather conditions. Charges for all maintenance and cleaning of erosion and sediment control devices shall likewise be paid on a unit price basis.

(e)(1) Through the services of independent consultants or by its own forces, the Department of Transportation shall monitor the water quality and inspect the installation and maintenance of the best management practices in accordance with the plan. All such consultants shall be prequalified by the Department of Transportation as a responsible bidder for the inspection of such best management practices and shall have the necessary expertise to determine that such practices are being installed and maintained in accordance with the plan. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(2) Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with paragraph (2) of subsection (a) of Code Section 12-7-6.

(3) If deficiencies in the plan or installation or maintenance of best management practices are discovered during the inspection, the Department of Transportation or the State Tollway Authority shall determine the appropriate corrective action. Further, the Department of Transportation or State Tollway Authority may require the consultant to amend the plan or the contractor to change its procedures by change order or supplemental agreement in order to institute such changes as may be necessary to correct any errors or deficiencies in the plan, the implementation of the plan, or the maintenance of the best management practices.

(4) The division, the Department of Transportation, or the State Tollway Authority shall control or coordinate the work of its employees inspecting any project so as to prevent any delay of, interference with, or hindrance to any contractor performing land-disturbing activity on any project subject to the provisions of the Code Section.

(f)(1) There shall be an Erosion and Sedimentation Control Overview Council which shall provide guidance on the best management practices for implementing any erosion and sediment control plan for purposes for this Code Section. The council shall be composed of nine members, including one member who shall be appointed by the Speaker of the House of Representatives and serve at the pleasure thereof; one member who shall be appointed by the Lieutenant Governor and serve at the pleasure thereof; and seven members who shall be appointed by the Governor and serve at the pleasure thereof, including one employee each from the Department of Transportation, the Environmental Protection Division of the Department of Natural Resources, and the Georgia Regional Transportation Authority, a professional engineer licensed to practice in this state from a private engineering consulting firm practicing environmental engineering, two representatives of the highway contracting industry certified by the Department of Transportation, and a chairperson. The council shall meet at the call of the chairperson. Each council member shall receive a daily allowance in the amount specified in subsection (b) of OCGA 45-7-212: provided, however, that any full-time state employee serving on the council shall draw no compensation but shall receive necessary expenses. The commissioner is authorized to pay such compensation and expenses from department funds.

- (2) The council may develop recommendations governing the preparation of plans and the installation and maintenance of best management practices. If a dispute concerning the requirements of this code section should arise, the Erosion and Sedimentation Control Overview Council shall mediate the dispute.

(g) Nothing in this Code Section shall be construed to affect the division's authority under OCGA 12-5-30, the "Georgia Water Quality Control Act".

**12-7-8. Certification of locality as issuing authority; periodic review; procedure for revoking certification.**

(a) If a county or municipality has enacted ordinances which meet or exceed the standards, requirements, and provisions of this chapter and which are enforceable by such county or municipality, and if a county or municipality documents that it employs qualified personnel to implement enacted ordinances, the director may certify such county or municipality as an issuing authority for the purposes of this chapter.

(b) The districts or the commission or both shall periodically review the actions of counties and municipalities which have been certified as issuing authorities pursuant to subsection (a) of this Code Section. The districts or the commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion and sedimentation control program. The districts or the commission shall notify the division and request investigation by the division if any deficient or ineffective local program is found.

(c) The division may periodically review the actions of counties and municipalities which have been certified as issuing authorities pursuant to subsection (a) of this Code Section. Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinances and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to subsection (a) of this Code Section has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to subsection (d) of Code Section 12-7-7, the division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 30 days within which to take the necessary corrective action to retain certification as an issuing authority. If the county or municipality does not take necessary corrective action within 30 days after notification by the division, the division may revoke the certification of the county or municipality as an issuing authority.

(d) The director may determine that the public interest requires initiation of an enforcement action by the division. Where such a determination is made and the issuing authority has failed to secure compliance, the

director may implement the board's rules and seek compliance under provisions of Code Sections 12-7-12 through 12-7-15. For purposes of this subsection, enforcement actions taken by the division pursuant to Code Sections 12-7-12 through 12-7-15 shall not require prior revocation of certification of the county or municipality as an issuing authority.

**12-7-9. Applications for permits; erosion and sediment control plans and data; time of issuance or denial.**

(a) Applications for permits shall be submitted in accordance with this chapter and the rules and regulations, ordinances, and resolutions adopted pursuant hereto. Such applications shall be accompanied by the applicant's erosion and sedimentation control plans and by such supportive data as will affirmatively demonstrate that the land-disturbing activity proposed will be carried out in such a manner that the minimum requirements set forth in Code Section 12-7-6 shall be met.

(b) No permit shall be issued to any applicant unless the issuing authority affirmatively determines that the plan embracing such activities meets the requirements of Code Section 12-7-6.

(c) Permits shall be issued or denied as soon as practicable after the application therefore has been filed with the issuing authority, but in any event not later than 45 days thereafter.

**12-7-10. Referral of application and plan to district.**

Except as otherwise provided by Code Section 12-7-7, immediately upon receipt of an application for a permit the application and plan for erosion and sedimentation control shall be referred to the appropriate district wherein such land-disturbing activities are proposed to take place, for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan proposed by the applicant.

**12-7-11. Requirement as to statement of reasons for denial of permit; conditions for approval; suspension, revocation , or modification per permit.**

(a) Within the time specified by Code Section 12-7-9, the issuing authority shall issue or deny the permit. The issuing authority, upon denial of a permit, shall state its reasons for the denial, setting forth specifically wherein such application is found to be deficient. Any land-disturbing activity permitted under this chapter shall be carried out in accordance with this chapter and the ordinance, resolution, or rules and regulations adopted and promulgated pursuant hereto. The issuing authority shall specify on the permit the conditions under which the activity may be undertaken.

(b) The permit may be suspended, revoked, or modified by the issuing authority, as to all or any portion of the land affected by the plan, upon a finding that the holder or his successor in title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this chapter or any ordinance, resolution, rule, or regulation adopted or promulgated pursuant

to this chapter. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

**12-7-12. Order directed to violators.**

- (a) Whenever the director has reason to believe that a violation of any provision of this chapter, any rule or regulation of the board, or any order of the director has occurred in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this chapter or the rules or regulations or order alleged to have been violated and may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time to be prescribed in the order. Any order issued by the director under this Code Section shall be signed by the director. Any such order shall become final unless the person or persons named therein request, in writing, a hearing pursuant to Code Section 12-7-16.
- (b) Whenever an issuing authority has reason to believe that a violation of any provision of a local ordinance or resolution has occurred within the jurisdiction of the issuing authority, the issuing authority may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time.
- (c) The following procedures shall apply to the issuances of **Stop Work Orders** :
  - (1) For the first and second violations of the provisions of this chapter, the director or the issuing authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the director or issuing authority shall issue a stop work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state, the director or issuing authority shall issue an immediate stop work order in lieu of a warning.
  - (2) For a third and each subsequent violation, the director or issuing authority shall issue an immediate stop work order; and
  - (3) All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

**12-7-13. Injunctions.**

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this chapter, the rules and regulations adopted

pursuant hereto, or any order or permit conditions in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, such person may make application to the Superior Court of the county where such person resides or, if such person is a nonresident of the state, to the Superior Court of the county in which the violative act or practice has been or is about to be engaged in for an order enjoining such act or practice or for an order requiring compliance with this chapter, the rules and regulations adopted pursuant hereto, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

**12-7-14. Actions to restrain imminent danger; emergency orders; duration of effectiveness.**

(a) Notwithstanding any other provision of this chapter to the contrary, upon receipt of evidence that certain land-disturbing activities occurring in a municipality or county which is not certified pursuant to subsection (a) of Code Section 12-7-8 are presenting an imminent and substantial danger to the environment or to the health of humans, the director may bring an action as provided in Code Section 12-7-13 to restrain immediately any person causing or contributing to the danger caused by such land-disturbing activities or to take such other action as may be necessary.

(b) If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such land-disturbing activities. Notwithstanding any other provision of this chapter, such order shall be immediately effective for a period of not more than 48 hours, unless the director brings an action under subsection (a) of this Code Section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

**12-7-15. Civil penalty; administrative hearing and review; criteria for imposition of penalty.**

(a)(1) Except as provided in paragraph (2) of this subsection, any person who violates any provision of this chapter, the rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this chapter or who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this chapter, notwithstanding any provision in any city charter to the contrary, municipal courts shall be authorized to impose a penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to

penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this chapter under county ordinances approved under this chapter shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(2) The following penalties shall apply to land-disturbing activities performed in violation of any provision of this chapter, any rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this chapter:

(A) The director or the issuing authority shall assess and collect a minimum penalty of \$250.00 per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for his or her own occupancy; and

(B) The director or the issuing authority shall assess and collect a minimum penalty of \$1,000.00 per day for each violation involving land-disturbing activities other than as provided in subparagraph (A) of this paragraph.

(b) Whenever the director has reason to believe that any person has violated any provision of this chapter, any rule or regulation adopted pursuant hereto, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this chapter, any rule or regulation adopted pursuant hereto, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, the hearing officer shall issue his decision imposing civil penalties as provided in this Code Section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-7-16.

(c) In rendering a decision under this Code Section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially on any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps and procedures necessary or appropriate to comply or to correct the violation or failure;

(4) Any prior violations or failures to comply by such person with statutes, rules, regulations, orders, or permits administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

(d) This Code Section shall apply only to violations, failures, or refusals to comply which occur in a municipality or county which is not certified pursuant to subsection (a) of Code Section 12-7-8.

**12-7-16. Hearings and review.**

All hearings on and review of contested matters, orders, or permits issued by or filed against the director and all hearings on and review of any other enforcement actions or orders initiated by the director under this chapter shall be provided and conducted in accordance with subsection (c) of OCGA 12-2-2. The hearing and review procedure provided in this Code section is to the exclusion of all other means of hearings or review.

**12-7-17. Exemptions.**

(a) This chapter shall not apply to the following activities:

(1) Surface mining, as the same is defined in OCGA 12-4-72, “The Surface Mining Act”;

(2) Granite quarrying and land clearing for such quarrying;

(3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, and other related activities which result in minor soil erosion;

(4) The construction of single-family residences, when such are constructed by or under contract with the owner for his or her own occupancy, or the construction of single-family residences not a part of a platted subdivision, a planned community, or an association of other residential lots consisting of more than two lots 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. 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 OCGA 12-5-30, “Georgia Water Quality Control Act”. 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 OCGA 1-3-3, "Definitions", 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 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 year 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 one and one-tenth acres or less; provided, however, that this exemption shall not apply to any land-disturbing activity within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways 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 one and one-tenth acres or less, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway 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 an 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 subsection;

(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 Tollway Authority; or any road construction or maintenance project, or both undertaken by any country or municipality: provided, however, that such projects shall conform to the minimum requirements set forth in Code Section 12-7-6; provided, further, that construction or maintenance projects of the Department of transportation or the State Tollway Authority which disturb five or more contiguous acres of land shall be subject to the provisions of Code Section 12-7-7.1; and

(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, provided that any such land-disturbing activity shall conform to the minimum requirements set forth in Code Section 12-7-6.

(b) Where subsection (a) of this Code Section requires compliance with the minimum requirements set forth in Code Section 12-7-6, issuing authorities shall enforce compliance with the minimum requirements as if a permit had been issued and violations shall be subject to the same penalties as violations by permit holders.

**12-7-18. Effect of chapter on requirements of OCGA 12-5-30, the "Georgia Water Quality Control Act."**

No provision of this chapter shall authorize any person to violate OCGA 12-5-30, the "Georgia Water Quality Control Act," or the rules and regulations promulgated and approved there under or to pollute any waters of this state as defined thereby.