

REGULATING INDUSTRIAL STORMWATER

Elizabeth Nicholas

AUTHOR: General Counsel, Upper Chattahoochee Riverkeeper, 3 Puritan Mill, 916 Joseph Lowery Blvd., Atlanta, GA 30318.

REFERENCE: *Proceedings of the 2005 Georgia Water Resources Conference*, held April 25-27, 2005, at the University of Georgia. Kathryn J. Hatcher, editor, Institute Ecology, The University of Georgia, Athens, Georgia.

Abstract. Polluted stormwater runoff from industrial facilities, together with construction stormwater runoff and municipal runoff, present the greatest threat to water quality in Georgia. Yet, the agency charged with protecting our water quality and regulating stormwater pollution is critically underfunded, and lacks the personnel needed to implement these programs. Maybe it is time for Georgia to reconsider its funding priorities.

INTRODUCTION

The degradation to water quality caused by stormwater pollution is very serious. EPA estimates show hundreds of millions of dollars lost each year through added government expenditures, illness, or loss in economic output due to stormwater pollution.¹ The environmental damage is at least as significant. Stormwater becomes polluted with oil, grease, pesticides, fertilizers, sediment, and other materials it picks up as it washes across roads, industrial sites, lawns, rooftops, and construction sites. This toxic soup then enters our waterways, impacting water quality, habitat, recreation, aesthetics, and fish populations.

Polluted stormwater is not a new problem, but it is a growing one. During the early 1970s, and again in the mid 80's, forward thinking U.S. legislators wrote unprecedented protections to control stormwater pollution into the Clean Water Act, 33 U.S.C., § 1251, *et seq.* Yet more than two decades later many of these provisions, which call on state and municipal governments to take responsibility for local implementation, remain unenforced.

REGULATING STORMWATER

The Georgia Environmental Protection Division (EPD) is the delegated authority under the Clean Water Act to issue permits regulating discharges of stormwater. EPD has developed *General Permits* to govern discharges of stormwater from construction sites, municipalities and industrial facilities. This paper will focus on the problems specific to the regulation of stormwater from industrial

facilities, under the General Permit for Storm Water Discharges Associated with Industrial Activity ("Industrial Permit").

Regulating and controlling what gets into stormwater runoff can be a difficult and confusing problem. Stormwater picks up everything in its path and carries it to our waterways. The federal regulations providing the basis for Georgia's Industrial Permit (as well as those for other states) provide primarily for technology requirements, rather than specific, numeric limits on pollutants. These best management practices (BMPs) work by limiting the exposure of pollutants to stormwater (roofing, etc.), providing filtering to remove pollutants from stormwater runoff, and/or capturing any potentially polluted stormwater on-site, and treating it.

If a facility is able to certify that there is *no exposure* of pollutants (or potential pollutants) to stormwater on its site, the facility may not need coverage under an Industrial Permit.

WHO NEEDS AN INDUSTRIAL STORMWATER PERMIT?

There is no quick answer to this question, as the Industrial Permit can apply to a wide range of different facilities and activities. Whether a particular industry needs an industrial stormwater permit (and/or is eligible for coverage under the permit) depends on the particular activities at that facility. The Industrial Permit specifically provides coverage for industrial facilities included in one of the 11 categories provided in federal regulations (40 CFR 122.26 (b)(14)(i)-(xi)), or having Standard Industrial Classification (SIC) codes 10-14, codes 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373.

These categories (and SIC codes) would include what most people think of as your traditional industrial activities – metal manufacturing, textile mills, recycling facilities, cement manufacturing, and paint manufacturing, to name a few. However, the permit also includes "industrial activities" that you may not have suspected,

such as landfills, land application sites, hazardous waste treatment, storage and disposal facilities, meat-packing plants, junkyards, waste treatment works, vehicle maintenance shops, and any other material handling facilities.

Determining coverage can be difficult for many facilities, particularly small, less sophisticated operations. The Georgia EPD currently has about 3,700 facilities regulated under the Industrial Permit. However, it is estimated that there are *thousands* of other facilities in the state that are required to have an industrial stormwater permit, but have not obtained coverage. Many of these facilities do not even know about the requirements of the Industrial Permit.

More guidance and education on the requirements and applicability of the Industrial Permit is sorely needed. However, budgetary and staff restraints at the Georgia EPD only seem to be getting worse, not better. EPD does not have the funding to institute an educational program, conduct outreach to facilities that may need coverage, or provide staff to draft guidelines. Unfortunately, this may mean that the estimated thousands of unpermitted dischargers will continue to illegally discharge polluted stormwater into our rivers and streams.

GENERAL REQUIREMENTS UNDER THE PERMIT

A Notice of Intent (NOI) must be submitted by any facility wishing to obtain coverage under the Industrial Permit. The NOI must include basic information about the facility, appropriate contacts, and receiving waters where discharges will occur.

The major requirement applicable to all facilities covered by the Industrial Permit is the development, updating, and compliance with a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must identify potential sources of stormwater pollutants at the facility and establish a system of Best Management Practices (BMPs) that will reduce pollutant levels in stormwater discharges from the facility. The SWPPP is required to be kept up to date at all times. Site inspections must be conducted by facility personnel on no less than a quarterly basis and a Comprehensive Site Compliance Evaluation with a subsequent SWPPP update must be conducted on no less than an annual basis.

If properly designed, fully implemented, and promptly updated, a SWPPP *may* be sufficient means to control stormwater. Much depends on the technical knowledge of the respective facilities and their willingness to comply, as the Industrial Permit, including SWPPP implementation,

is a system where industries self-regulate. Many permitting programs have been successful where industries *are* largely self-regulating. However, successful programs generally include some means to hold facilities accountable. Often, this involves submissions to the regulatory agency of things such as discharge monitoring reports, laboratory analysis, engineering reports, etc. The Industrial Permit currently does not require *any* submission of this sort. The *only* document that a facility is required to file with EPD is the NOI.

UCR has continuously advocated for greater accountability under this program. Specifically, UCR believes that SWPPPs should be available for reasonable public review, as required under EPA's Multi-Sector General Permit that regulates industrial stormwater discharges in states that do not have a state-delegated program. UCR also believes that information such as monitoring data and site inspection/compliance reports should be submitted to EPD on at least an annual basis. Additionally, UCR has advocated for industries to be responsible for ensuring that their discharges do not, in any way, cause or contribute to impairment of a stream. At this time, we do not know how EPD will respond to our requests on these issues.

CURRENT STATUS OF GEORGIA'S GENERAL INDUSTRIAL PERMIT

Georgia's Industrial Permit expired in May 2003. The Permit was *administratively extended* to provide continuing coverage for facilities already under the permit (those who had previously submitted NOIs). However, any new facilities that did not submit an NOI and obtain coverage before the expiration of the Permit, cannot obtain coverage under the administratively extended permit. Thus, these facilities are *not* covered under the Industrial Permit, although they certainly can apply for an individual permit to cover their stormwater discharges.

Federal EPA guidance on this issue provides that a facility must apply for an individual permit when no general permit is available for coverage. While such an application is pending (or being developed), the facility must comply with the terms of the expired permit. However, industries are reporting that they have not applied for, and do not intend to apply for, individual permits for their discharges. Additionally, industries have told UCR that GA EPD told the industries that they are not required to obtain an individual permit, and are *immune* from citizen suits from unpermitted discharges. If true, this approach is clearly inconsistent with EPA guidance and is also inconsistent with findings of courts

on the duty of a facility to comply with permit terms when there is no permit available for coverage.

The reasons for EPD's lengthy delay in re-issuing the Industrial Permit are unclear. EPD did convene an ad hoc stakeholder group (formed from groups/industries that presented comments on the first draft of the new Industrial Permit) to attempt to reach consensus on some issues of disagreement. However, the last meeting of the stakeholders group occurred in July 2004, and as of mid-February, the Industrial Permit still has not been issued.

CONCLUSION

Georgia must do more to confront the substantial threat that industrial and other sources of polluted stormwater pose to the water quality of this state. The budget for the Georgia EPD is being decreased, year after year, and positions that could work to enforce stormwater regulations and requirements are being cut. If industries, citizens, and government agencies are serious about wanting to decrease stormwater pollution, a message needs to be sent by all of these parties that we consider this a priority for Georgia, and the Governor, General Assembly, and local governments need to increase the budgets for these programs.

¹ *Stormwater Strategies: Community Responses to Polluted Runoff*, NRDC (1999), available at:
<http://www.nrdc.org/water/pollution/storm/stoinx.asp>