



# Georgia EPD Watershed Protection Branch – GIEC Annual Meeting

Jac Capp, Branch Chief, EPD Watershed Protection Branch

December 3, 2018

# Watershed Branch Organization Update

- Updates to Key Personnel & Related Matters
  - [https://epd.georgia.gov/sites/epd.georgia.gov/files/wpb\\_phonelist.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/wpb_phonelist.pdf)
  - Whitney Fenwick, Acting Unit Manager, Wastewater Industrial Permitting Unit
  - Wei Zeng, Program Manager, Water Supply Program
  - Johanna Smith, Unit Manager, Surface Water Permitting Unit
  - Cameron Wolfe, Unit Manager, Stormwater Unit

# Triennial Review of Water Quality Standards

- 40 CFR 131.20 requires Georgia to review and revise water quality standards from time to time, but at least once every three years
- Water quality standards include
  - Designated Uses
  - Criteria, either numeric or narrative
  - Antidegradation policy
- Public Hearing: February 26, 2016
- Stakeholder Meetings: June 23, 2017, October 11, 2017, October 20, 2017
- Public Meetings: November 29, 2017, January 19, 2018
- Rulemaking: DNR Board Briefing March 27, 2018 & DNR Board Adoption June 27, 2018
- Next steps: Attorney General Certification and then EPA Approval

# Triennial Review of Water Quality Standards

- 391-3-6-.03(2)(b)(ii) - Clarify the state's antidegradation rule to ensure consistency with updates in the federal requirements under 40 C.F.R. § 131.12
  - 391-3-6-.03(3)(k) - Provide a definition for the term “practicable alternatives”
- 391-3-6-.03(2)(g) - Explicitly incorporate the use of schedules of compliance in NPDES permits, which is consistent with updates in the federal regulations under 40 C.F.R. § 131.15, and reference implementation under 391-3-6-.06(10)
- 391-3-6-.03(3)(e) - Clarify the definition for “estuarine waters,” which incorporates the current definition for “areas where salt, fresh and brackish waters mix”
  - 391-3-6-.03(3)(o) - Delete definition of “Areas where salt, fresh and brackish waters mix”
  - 391-3-6-.03(5)(e)(ii)&(iii) - Clarify that the toxic priority pollutant criteria apply to “coastal” (as already defined) and “estuarine waters”, and not to “marine estuarine” waters (an undefined term not used elsewhere in the rule)

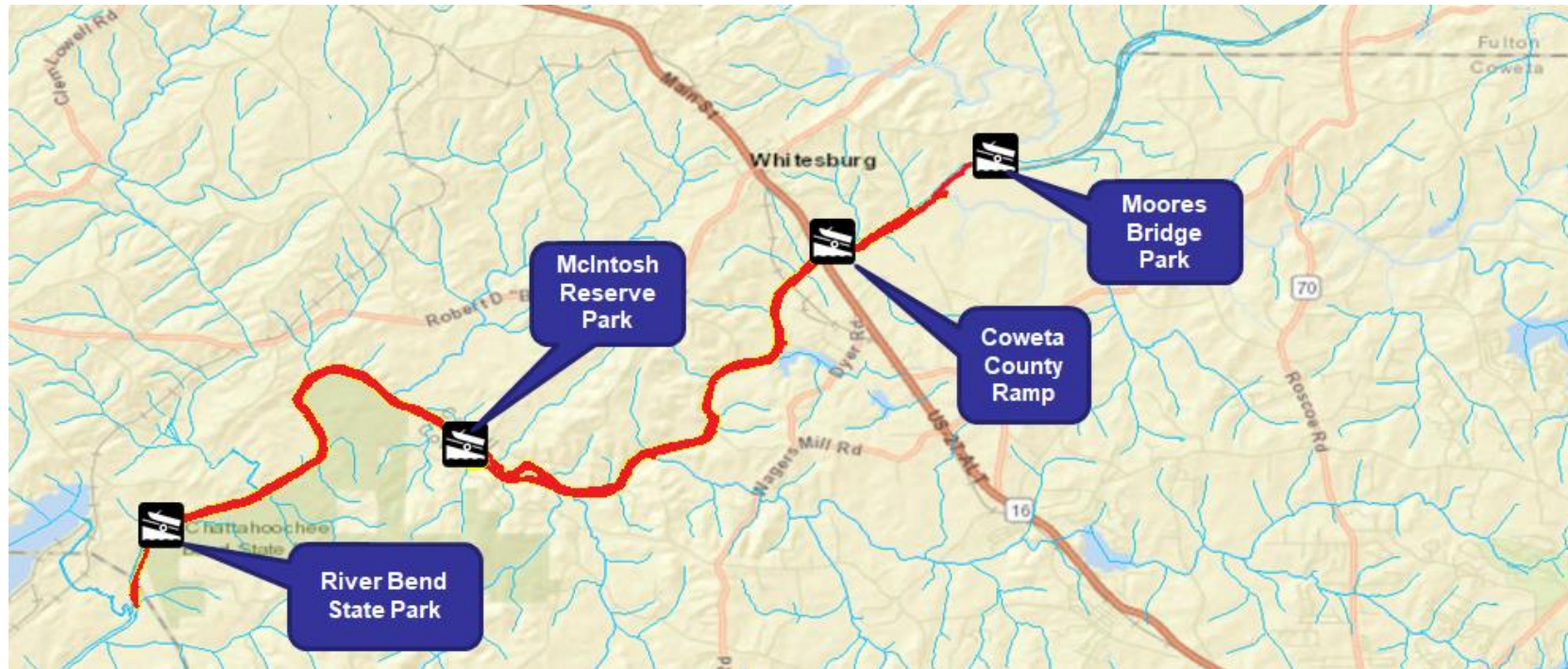
# Triennial Review of Water Quality Standards

- 391-3-6-.03(3)(i) - Include pH in the definition of “natural conditions”
- 391-3-6-.03(5)(e)(ii) - Adopt EPA’s 2016 recommended aquatic life cadmium criteria
- 391-3-6-.03(6)(a)(i) and 391-3-6-.03(6)(c)(iii) - Revise bacteria criteria for and drinking water and fishing designated uses to protect secondary contact recreation
  - 391-3-6-.03(12), 391-3-6-.03(17)(a)(v)1., 391-3-6-.03(17)(b)(v)1., and 391-3-6-.03(17)(d)(v)1. - Update related subparagraphs that reference those criteria
- 391-3-6-.03(6)(a)(i), 391-3-6-.03(6)(b)(i), and 391-3-6-.03(c)(iii) - Revise the units for bacteria measurements to a non-method specific count, so as not to favor one EPA approved testing method over another



# Triennial Review of Water Quality Standards

- 391-3-6-.03(14) - Revise and correct specific water use classifications:
  - Remove the entry for the Chattahoochee River, from Atlanta (Peachtree Creek) to Cedar Creek, from this paragraph since that stream is classified as “Fishing”;
  - Correct the river basin in which Reed Bingham State Park Lake is located;
- Updated Designated Use of the Chattahoochee River from Snake Creek to Yellowdirt Creek from “Fishing” to “Recreation”



# Triennial Review of Water Quality Standards

- 391-3-6-.03(17)(g) and 391-3-6-.03(17)(h) - Adopt site-specific lake standards for Lakes Oconee and Sinclair
  - Chlorophyll-a criteria for the months of April through October at three locations on each lake are being added;
  - Total nitrogen and total phosphorus nutrient criteria are being added;
  - pH criteria are being updated;
  - Bacteria, dissolved oxygen, and temperature criteria are based on lake's designated uses

# Antidegradation Implementation Guidance

- Guidance needed updating due to triennial review rule updates
- Draft guidance released May 2018 for comment
  - <https://epd.georgia.gov/georgia-water-quality-standards>
- EPD held two public workshops May 25 and June 11, 2018 with EPD presentation, opportunity for public comment, and discussion
- EPD considered the comments received and updated the draft guidance and provided another opportunity for comment in October 2018
- Comment period closed November 30, 2018 with no additional comments received
- EPD has also updated the Antidegradation Checklists for both Industrial and Domestic facilities to assist applicants through the antidegradation analysis



# Antidegradation Implementation Guidance

- Antidegradation analysis required for proposed new or expanded (increase in pollutant loading) point source discharges to surface waters
- 391-3-6-.03(2)(b)(ii)2 of Georgia's Rules
  - Analysis of alternatives, including selection of one such alternative
    - “Georgia’s antidegradation rule does not require the least degrading practicable alternative be selected for implementation. The requirement is for the applicant to examine alternatives and provide to EPD documentation of the alternatives analysis and a reasoned explanation for whichever practicable alternative is ultimately selected for implementation.”
  - Discharge (new or expanded) is necessary to accommodate important economic or social development

# Wastewater Permitting

## Percent Current Totals

Permit Type	Extended permits	Total Universe	Percent Count
NPDES Individual	68	659	89.7%
LAS Individual	21	221	90.5%
General permits	0	489	100.0%
Pretreatment	2	78	97.4%
<b>Total</b>	<b>91</b>	<b>1447</b>	<b>93.7%</b>

- Total number of Industrial permits – 553
- No. of Permits in Industrial backlog – 30
- Two years ago and one year ago extended permits were 173 and 103... now down to 91
- Two years ago and one year ago number of extended industrial permits was 113 and 67... now down to 30

# Wastewater Permitting - Savannah

- Savannah River 5R
- May 13, 2016 – EPA Approved 5R
- No. of Affected GA Permits – 46
  - All renewal applications have been received
  - 18 permits have been issued
  - 4 permits have been terminated
  - 24 permits are extended

# Wastewater Permitting

- Coal (or former coal) Power Plant NPDES Permit Renewals
- All eleven permitted facilities due for renewal
  - McDonough issued 2016
  - Mitchell issued 8/18/2017
  - Branch issued 10/16/2017
  - Hammond issued 12/13/2017. Permit appealed – OSAH final decision 10/4/2018. Permit modification to address OSAH decision draft expected December 2018.
  - McManus issued 2/6/2018.
  - Kraft permit revoked (plant closed and all discharges ceased) 4/30/2018
  - McIntosh draft issued. Comment closed 2/2/2018. Draft re-issued to address issue from Hammond appeal. Comment closed 11/23/2018
  - Yates – draft expected December 2018
  - Remaining: Wansley, Bowen, Scherer
- Challenging Issues: Ash pond closure, Dewatering, Potential legislation, ELG finalization and reconsideration, Mixing Zone, Cooling Water Intake, EPA comments

# GEOS Wastewater Permitting

- All wastewater applications (19 different types) will be processed through GEOS. It is available now (started October 1, 2018).
  - Tentatively targeting making it mandatory for all applications submitted February 1, 2019 or after
- Applications received prior to that date will also be tracked using GEOS
- Benefits and Features
  - Real time tracking of permit status for permit applicants
  - Ability to communicate with permit writer in the system
  - Ability to update the application in the system
  - Draft and final permit documents in the system
  - After data is entered the first time, it is available for future applications
  - Instant verification, and record, of receipt of application



# Stream Buffers

- HR362/SR152 - Joint Study Committee on Stream Buffers in Georgia
  - <http://www.legis.ga.gov/Legislation/20172018/168777.pdf>
- Related to Tired Creek Supreme Court Decision
  - TURNER v. GEORGIA RIVER NETWORK et al. Decided: June 15, 2015
  - Wrested Vegetation
- Committee met October 12, November 9, and December 13, 2017
- Final Report:  
[http://www.house.ga.gov/Documents/CommitteeDocuments/2017/StreamBuffers/Final\\_Report\\_JointLegislativeStudyCommittee\\_on\\_Stream%20Buffers.pdf](http://www.house.ga.gov/Documents/CommitteeDocuments/2017/StreamBuffers/Final_Report_JointLegislativeStudyCommittee_on_Stream%20Buffers.pdf)
  - Care about private property
  - Compared to other southeast states, Georgia's buffer protections are the most protective
  - Only recommendation was that the buffer issues are worthy of additional study by the legislature
- Issues are not going away...

# ACF WCM Update, Lake Lanier Withdrawals, and Lanier TMDL

- December 8, 2016, the U.S. COE released the Final Environmental Impact Statement and Water Control Manual for Apalachicola-Chattahoochee-Flint River Basin (final ACF Water Control Manual)
  - The Water Control Manual incorporates Georgia's full water supply request of 621 Million Gallons per Day (mgd) through 2050. (242 mgd from Lake Lanier and 379 mgd from the Chattahoochee River upstream of Peachtree Creek)
- Georgia to contract with U.S. COE for the storage in Lake Lanier and to subcontract with water suppliers for their portion of the storage
- EPA approved the Lake Lanier TMDL on May 29, 2018
  - Approved TMDL will allow EPD to permit new and expanded discharges into the lake

# LAS Permitting Guidelines – Possible Updates

- Project Summary:
  - Update design guidelines for Land Application by Drip Irrigation (1996) and Spray Irrigation (2010)
  - Combine the two documents for consistency and to ease of use
  - [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/Revised%20LAS%20Guidelines\\_June%202018.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/Revised%20LAS%20Guidelines_June%202018.pdf)
- Goals
  - Protect water quality
  - Address concerns with failing systems
  - Improve EPD efficiency and review time
  - Ensure permits are legally defensible, protective of human health and the environment, and enforceable
- Timeline
  - Sept 2017 – Feb 2018: EPD internal work
  - June 2018 - Targeted technical stakeholder meeting
  - Aug 2018 - Technical & permittee stakeholder meeting
- Next Steps – Reevaluate and restart stakeholder process

# LAS Permits - Challenging Situations

- Mountain Ridge Waste Water Treatment Plant, Forsyth County
  - Private LAS immediately adjacent to neighborhood
- EPD executed Consent Orders for noncompliance
  - October 2015
  - July 2018
  - November 2018



## Forsyth County Board of Commissioners

March 20, 2018

Mr. Richard Dunn  
Director  
Georgia Environmental Protection Division  
Floyd Towers East, Suite 1456  
2 Martin Luther King Jr. Dr., SE  
Atlanta, Georgia 30334

Re: Mountain Ridge Waste Water Treatment Plant – Permit No. GAJ030769

Dear Director Dunn:

On Friday, March 16, Forsyth County resident Renae Glover, Georgia State Representative Marc Morris, Georgia State Senator Steve Gooch, Forsyth County Commission Chairman Todd Levent, Forsyth County Commission Vice Chairman Laura Semanson, Forsyth County Deputy County Manager Tim Merritt, and other interested individuals met and toured the vicinity near Mountain Ridge Waste Water Treatment Plant (WWTP) (LAS Permit No. GAJ030769) in north Forsyth County. This meeting was scheduled as a result of many complaints regarding excessive wastewater flowing from the land application site (up gradient) onto private property (down gradient) in very close proximity to resident dwellings. The complaints have been made over several years to the Georgia Environmental Protection Division (EPD), apparently without resolution.

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CHAIRMAN

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COUNTY MANAGER

TIM R. MERRITT  
DEPUTY COUNTY MANAGER

# LAS Permits - Challenging Situations

- TenCate (aka Southern Mills) Consent Decree with Flint Riverkeeper
  - Permit Limits for Chemical Oxygen Demand (COD) and Total Suspended Solids (TSS);
  - Technical Improvements including:
    - Bi-monthly sampling/reporting for COD and TSS
    - Rehabilitate the 5 existing ponds;
    - Construct an additional pond;
  - Southern Mills to reimburse sampling expenses of Riverkeeper
  - Semiannual meetings between TenCate and Riverkeeper
  - \$170,000 to Riverkeeper for sampling
  - Attorneys' fees and expenses
  - \$80,000 to American Rivers for SEP
  - \$5,000 per month stipulated penalties for permit exceedances to U.S. Treasury

## Property owners, environmental group intend to sue over Flint River pollutants

by Katherine Shepherd | Thursday, April 21st 2016



FEATURED

## Macon judge approves agreement between Flint Riverkeeper, Southern Mills

Pollution case resolution comes after years of work

From Staff Reports

news@albanyherald.com Nov 22, 2018



# LAS Permits - Challenging Situations

- Fieldale Farms, Stephens County
- January 2007 – Consent Order issued for:
  - Fish kill
  - Over applying Nitrogen to the fields
  - High Nitrates in wells
  - Improper management of ponds
- December 2013 – NOV issued for:
  - Wastewater spill
  - Land applying during a major rainfall
  - High Nitrates in wells
- February 2016 - NOV issued for:
  - High Nitrates in wells (25 violations dating back to 4 years)
- Still dealing with high nitrates in wells. Attempting to address through additional requirements in permit renewal.
- Public hearing January 17, 2019

## Riverkeeper comments 10/2018

Savannah Riverkeeper is concerned about more Land Application Facilities operating in Georgia with animal waste. This spreading of rendered poultry and other animal waste on empty fields is dangerous and threatens the sustainable future of Georgia. Operations like this have been shown to harm our environment and lower surface water quality, which accounts for more than 50% of drinking water in the state. This is part of a larger regulatory failure to end these harmful practices.

## Request for public hearing from State Representative 10/2018

I am writing today to ask you to conduct a public hearing regarding Permit No.: GAJ010369. My understanding is that this permit is an expansion of an existing land application operation in Eastanollee, Georgia. This project is located within my State House District and I have received several inquiries regarding this matter. It appears that the impacts of the expansion/substantial modification have not been clearly stated in the "official fact sheet" distributed by the Georgia Environmental Protection Division. I request that the public hearing be conducted in Stephens County, Georgia.

## Comment from Law Firm representing Stephens County 10/2018

Our firm represents Stephens County. The Commissioners have received a number of questions and concerns about the New LAS permit for Fieldale Farms. We are seeking information to answer citizen questions and to determine if it expands the existing LAS operation in any way and if it will trigger any requirements under the County's Land Use Ordinance. This follows up on the messages left from my assistant Kristina Powers while I have been on vacation.

# EPA NPDES Updates Rule

- EPA initially proposed (May 18, 2016) to update the NPDES regulations in order to eliminate inconsistencies between regulations and application forms, improve permit documentation and transparency, and provide clarifications to the existing regulations. EPA has indicated the plan to divide the rule into two phases.
  - Phase I will likely include definitional updates, application requirements for vessels and pesticides, updated application forms, and revised public notice requirements to allow for web based notification.
  - Submitted for OMB Review: October 9, 2018
  - Phase I Final possible December 2018 / January 2019
  - Phase II: No timeline. Look for clues after Phase I is completed.
- Following issuance of this rule, authorized states have up to one year to revise, as necessary, their NPDES regulations to adopt the requirements of this rule, or two years if statutory changes are needed, as provided at 40 CFR 123.62.

# Report on EPD's Review of Current Regulations Relating to ASR

- HR 1198 adopted in Legislature February 11, 2016
  - Encourage EPD to review current regulations as they relate to aquifer storage and recovery;
  - Ensure they are sufficient to provide for the protection and preservation of the State's aquifers;
  - Revise such regulations when necessary; and
  - Consider the availability of other water supply sources in the permitting of any potential aquifer storage and recovery project.
  - Urged EPD to issue a report detailing its review of current regulations relating to aquifer storage and recovery to the Board of Natural Resources

# ASR Report Conclusions

- Final report was provided to the Board during their September 27, 2017 meeting.
- Current regulations and the authorities they establish are sufficient to protect water supplies, including underground drinking water, and provide for the protection and preservation of the State's aquifers.
- When taken together and, implemented in a coordinated manner for a specific project, these laws and rules function to effectively regulate the entire ASR process.
  - EPD should develop guidance that describes how the coordination should be done
- <https://epd.georgia.gov/regulation-aquifer-storage-and-recovery>

# ASR Report Conclusions – Next steps

- EPD Guidance:
  - Instructions to applicants that detail requirements and expectations for project-specific technical information
  - Prepare pre-application project checklist to be completed by any future applicant
  - Designation of a single individual within EPD to coordinate permitting and communication on a project
  - Early consultation between EPD and applicant to develop project-specific “roadmap”
    - Including joint or coordinated public notice on permits
  - Timeline:
    - August 7, 2018 - public notice announcing the draft
    - September 12, 2018 - public meeting
    - September 21, 2018 – end of comment period
    - December 2018/January 2019 – finalize guidance



# Challenging an Action of the EPD Director

- O.C.G.A. §§ 12-5-43, 12-2-2(c)(2), 50-13-13, 12-5-31 and Ga.Comp.R. & Regs. r. 391-1-2.-03 authorize any person who is aggrieved or adversely affected by any order or action of the Director to obtain review of the Director's order or action (typically a permit)
- Petition must be filed within thirty days of the Director's action as required by O.C.G.A. § 12-2-2(c)(2) and § 12-5-43
- Pursuant to O.C.G.A. § 12-2-2(c)(2)(B), the petition stays the effectiveness of the Director's action
- Pursuant to O.C.G.A. § 12-2-2(c)(2)(A), the petitioner is entitled to a hearing before an administrative law judge (ALJ) of the Office of State Administrative Hearings (OSAH) acting in the place of the Board of Natural Resources

# Rayonier NPDES Permit Appeal

- NPDES Permit issued December 29, 2015
- 3<sup>rd</sup> Party (Altamaha Riverkeeper) Permit appeal claimed that the permit would cause a violation of “narrative” standard in Ga. Rule 391-3-6-.03(5)(c)
  - “All waters shall be free from material related to municipal, industrial, or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses.”
- The rules do not define “objectionable,” “interfere,” or “legitimate water uses.” However, the rules do state that the “reasonable and necessary uses” of the waters of the state include, among other things, “agricultural, industrial, recreational, and other legitimate uses.
- OSAH ALJ reversed the renewed permit September 30, 2016
  - For periods of low flow only

# Rayonier NPDES Permit Appeal

- Concerns with ALJ Decision:
  - “Legitimate uses” effectively changes the designated use of the water body.
  - “All legitimate uses” of the river must be protected at “all times” and if one person finds the conditions objectionable, then the rule is violated.
  - “Any Interference” merely meant that if one person changed their behavior because the effluent ran afoul of their subjective aesthetic tastes, then that amounted to “interference” with their use of the river.
  - Logical result: if one person finds a condition on the river objectionable at any time, then the narrative water quality standard is not being met.

# Rayonier NPDES Permit Appeal

- Wayne County Superior Court Decision March 17, 2017
  - Reversed the OSAH ALJ decision
  - ALJ interpretation would require EPD to manage the State's water resources to meet the subjective wishes of water users with the highest water quality expectations. This would collapse the "designated use" hierarchy into one classification requiring all waterbodies meet the most stringent standard.
  - EPD's interpretation of the standard is reasonable and in accord with the statutory and regulatory purposes and the context of the standard as a whole. Color and odor in receiving waters must be controlled and interference with the use of the water limited, but in a reasonable manner.
  - Instead of remanding the decision back to the ALJ, reinstated the permit.
- Riverkeeper appealed decision to State Court of Appeals. Court ruled June 13, 2018
  - Agreed with Superior Court regarding EPD's interpretation of the standard
  - Disagreed with Superior Court regarding reinstatement of the permit. Instead remanded with direction that the superior court in turn remand the case to the ALJ for reconsideration in light of this opinion.
- Riverkeeper appealed decision to GA Supreme Court July 6, 2018. Waiting to hear if court will take the case.

# Clarification of Narrative Water Quality Standards

- Proposed December 2017
- Prompted by OSAH ALJ interpretation of rule
- Purpose of the amendments is to clarify the current language
- Change is a clarification only and does not change the stringency of the narrative standards being amended
- Existing language could lead to incorrect interpretations
- Proposed amendments are designed to prevent such misinterpretations
- Current language could be interpreted incorrectly to prohibit any interference with any water use at any time, thus leading to an interpretation that if one person finds an aesthetic condition of the water objectionable at any time, then the narrative water quality standard is not being met



# Clarification of Narrative Water Quality Standards

- Since the rules must carry with them some level of certainty and predictability, the rule amendments were being proposed to ensure that is the case
- The first proposed change is to insert the word “unreasonably” immediately before the word “interfere” at Rule 391-3-6-.03(5)(b) and (c)
- The second proposed change is to substitute “the designated use of the water body” in place of “legitimate water uses” also at Rule 391-3-6-.03(5)(b) and (c)
- DNR Board adopted this change at the March 27, 2018 Board Meeting
- Rule change has been submitted to U.S. EPA. Waiting on their review.

# City of Guyton LAS Permit Appeal

- October 18, 2013, the EPD issued LAS permit to City of Guyton for LAS on a 265-acre tract of land located in Effingham County
- Treated wastewater would be applied to fields using spray irrigation on approximately 44 acres
- Adjacent land owner appealed permit to OSAH
- Claims
  - 1. Permit issued in violation of state antidegradation rule
  - 2. Operation of LAS will violate WQS
  - 3. Permit issued in violation of LAS Guidelines without a rational basis
  - 4. Permittee will be unable to comply with the Permit
- EPD argued that antidegradation rule does not apply to nonpoint discharges to groundwater

# City of Guyton LAS Permit Appeal

- OSAH affirmed permit on May 26, 2015
  - NOTE: OSAH hearing was delayed during FEMA map revision
- Lengthy explanation regarding antidegradation rule:
  - “Since Georgia’s antidegradation rule was promulgated to implement the Director’s delegated authority under the CWA, the CWA must guide interpretation of the rule.”
  - “...this Court concludes that a better reading of the CWA limits the applicability of its NPDES permitting provisions to surface water discharges. NPDES Permits are therefore not required for groundwater discharges, even where the groundwater is hydrologically connected to a surface water.”
- Regarding deviations from LAS Guidelines
  - “However, the LAS Guidelines are ‘not intended to be a cookbook,’ and the Director is not required to reject a permit application if a particular site does not meet each and every criterion listed... Rather, the Director may issue a permit that contains specific conditions to address the site’s limitations in a manner that complies with Georgia law.”

# City of Guyton LAS Permit Appeal

- Permit went into effect. City then constructed and began operating the facility.
- Decision appealed to County Superior Court that the EPD had issued the permit without compliance with the antidegradation rule
- The County Superior Court affirmed the ALJ's decision, concluding that issuance of the permit was lawful
- Decision appealed to State Court of Appeals that the relevant part of the antidegradation rule is unambiguous; that the ALJ's and the superior court's interpretation of that rule contradicted the rule's plain language; and that the EPD's cited guidelines provided no authority to avoid the clear mandates of that rule.

# City of Guyton LAS Permit Appeal

- Court of Appeals decision February 27, 2018 reversed superior court's judgment affirming the ALJ's decision. This case is remanded.
  - "...the ALJ and the superior court erred as a matter of law in interpreting the antidegradation rule in such manner. The proper interpretation of the antidegradation rule, which adheres to its plain language, is that before a permit can be issued that allows lower water quality, the EPD must find that degradation of the water quality is necessary to accommodate important economic or social development in the relevant area. See Ga. Comp. R. & Regs. 391-3-6-.03(2)(b)(ii). Notably, the antidegradation rule does not limit its application to point source discharges.”
- NOTE:
  - Court of Appeals does not mention fact that the EPD rule is to implement a delegated program under the CWA
  - Court of Appeals does not even reference the fact that this is a discharge to groundwater as opposed to surface water

# City of Guyton LAS Permit Appeal

- March 29, 2018, EPD appealed the Court of Appeals decision to the Georgia Supreme Court.
- Court has agreed to hear the case August 27, 2018.
- EPD brief filed October 17, 2018.



# Plant Hammond NPDES Permit Appeal

- Plant Hammond is an 865 megawatt (MW) coal-burning electric generation facility comprised of 4 operating units located on the Coosa River approximately 10 miles west of Rome, Georgia
- The facility is permitted to withdraw water from the Coosa River for its cooling needs using once-through cooling
- December 13, 2017, EPD issued final NPDES permit for Plant Hammond

# Plant Hammond NPDES Permit Appeal

- January 12, 2018, Permit appealed by Southern Environmental Law Center (SELC) on behalf of Coosa River Basin Initiative (CRBI). Separate permit appeal from Sierra Club.
- Permit is not in effect due to permit appeal. As such, facility continues to operate under the old permit.

# Plant Hammond NPDES Permit Appeal

- More stringent new permit requirements not in effect due to permit appeal
  - First ever heat load limits. (Part I. A.1.b.)
  - First ever load monitoring. (Part I. A.1.b.)
  - Changed location of upstream temperature monitoring location further upstream to ensure that there are no effects from the power plant on the upstream temperature reading. (Part I. A.1.a.)
  - Increased number of sampling points for downstream temperature monitoring from 1 sampling point to 5 sampling points. (Part I. A.1.a.)
  - Changed the way the temperature monitoring is used to determine if the Water Quality Standards (WQS) for temperature is being met from calculation to direct measurement. (Part I. A.1.a.)
  - First ever coal ash impoundment integrity requirements (Part III.E.)
  - First ever inclusion of Effluent Limit Guideline (ELG) requirements from 2015 final rule (Part III.C.5 and 7)
  - First ever inclusion of 316(b) requirements from 2014 final rule (Part III.C.4)

# Plant Hammond NPDES Permit Appeal

Issue	CRBI	Sierra Club
Thermal mixing zone too large. Results in harmful condition in river. <b>Claim abandoned</b>	X	X
Unlawfully delays compliance with 316(b) rule. <b>Claim abandoned</b>	X	X
Fails to establish interim BTA for cooling water intake structure. <b>EPD loses summary judgment</b>	X	X
Unjustified delays compliance with ELG <b>3-Day Hearing at OSAH (July 2018). EPD wins.</b>		X
Pre-approves dewatering in violation of CWA. Dewatering approval must be through major modification to NPDES permit. <b>EPD wins summary judgment</b>		X

# Plant Hammond NPDES Permit Appeal

- Two issues decided on summary judgment June 25, 2018 (explanatory memorandum from ALJ July 6, 2018)
- Issues decided on summary judgment:
  - Dewatering –
  - Interim BTA -

# Plant Hammond NPDES Permit Appeal

- **Interim BTA**, Sierra Club and CRBI Claim [ALJ order July 6, 2018, page 10-15]
  - Because GPC requested an alternate schedule to submit the information required by 40 CFR 122.21(r)(ii) the Director was required to establish interim BTA standards in the permit based on best professional judgement.
    - 40 CFR 125.98(b)(5): After October 14, 2014, in the case of any permit issued before July 14, 2018 for which the Director, pursuant to § 125.95(a)(2), has established an alternate schedule for submission of the information required by 40 CFR 122.21(r), the Director may include permit conditions to ensure that, for any subsequent permit, the Director will have all the information required by 40 CFR 122.21(r) necessary to establish impingement mortality and entrainment BTA requirements under § 125.94(c) and (d). In addition, the Director must establish interim BTA requirements in the permit based on the Director's best professional judgment on a site-specific basis in accordance with § 125.90(b) and 40 CFR 401.14.

# Plant Hammond NPDES Permit Appeal

- **Interim BTA**, ALJ Decision [ALJ order July 6, 2018, page 10-15]
  - Because the Director established an “alternate schedule” for GPC’s submission of information in Section 122.21(r), the Director must impose interim BTA in the permit while Georgia Power is performing that work. 40 CFR 125.98(b)(5)
  - Both GPC and the Director rely on the “in accordance with 125.90(b) and 401.14” to support their argument that the Director was not required to establish interim BTA.
  - The “in accordance with” language refers not to the size of facility but rather refers to the standard under which EPD must develop interim BTA.
  - In the “interim” while GPC conducts its entrainment and other studies that are required, EPD must employ the Small Plant BTA Standard in the Permit spelled out in 125.90(b), as opposed to the large plant standard in 125.91(a).
  - ALJ notes that interim BTA may be different from the final BTA. By concluding that interim BTA is required, ALJ is not ruling that GPC should employ expensive technology that it will later be required to dismantle or change. Rather, the Director must use best professional judgement to determine interim BTA.



# Plant Hammond NPDES Permit Appeal

- **Dewatering, Sierra Club claim:** [ALJ order July 6, 2018, page 4-6]
  - Permit...unlawfully authorize(s) dewatering discharges in advance...without modifying the Permit subject only to certain disclosure requirements.
  - Permit should be invalidated and remanded to the Director...with a condition stating that Plant Hammond may not make any discharges associated with ash pond dewatering until GPC applies for and obtains a permit modification, including the assessment of TBELs and WQBELs
- **ALJ Decision:**
  - Federal regulations do not require a major permit modification for every change in the waste stream. Director must first determine that a change is material and substantial and the change requires new/modified permit conditions.
  - Wastewater from coal ash pond dewatering is considered to be “legacy wastewater” and not a new activity, disposal practice, or waste stream.
  - Permit does not “pre-approve” any discharges at the facility that did not historically occur at Plant Hammond.
  - Permit complies with the applicable law concerning the potential dewatering of the coal ash ponds. Claims regarding the possible dewatering are speculative and not ripe given the uncertainty of the dewatering.

# Plant Hammond NPDES Permit Appeal

- July 12, 13, and 19, 2018 - Hearing held at OSAH regarding the one remaining issue: whether or not the ELG applicability dates EPD established in the permit are in compliance with applicable regulations
- October 4, 2018 – ALJ affirmed permit regarding the ELG applicability dates
  - ALJ “concludes that the compliance dates included in the permit are reasonable, lawful, and the shortest reasonable period of time consistent with all state and federal laws.”

# Hard Labor Creek Reservoir – Water Intake

- October 19, 2017, EPD approved a stream buffer variance to Walton County Water and Sewerage Authority for impacts to 230 linear feet (5,750 ft<sup>2</sup>) along the east bank of the Apalachee River.
  - NOTE: Application (and variance) incorrectly used “Sewer Authority” instead of “Sewerage Authority”
- The variance authorized buffer encroachments necessary to construct a new water intake facility serving the Hard Labor Creek Reservoir.
- November 17, 2017, variance was appealed on the basis that it was issued to an entity which is not the owner of the property and required by OCGA 12-7-6.
- EPD confirmed with Walton County Sewerage Authority that they did not have a right of access to the property for which the variance was granted.
- EPD rescinded the variance on December 5, 2017

# Expectations for 2019

- GEOS
- Commence next Triennial Review of WQS (adoption in 2021)
- LAS Permitting Guidance – Reboot
- Guidance for conversion of NPDES permit limits from Fecal bacteria to E. Coli.

