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April 28, 2023

**Via Email**

Georgia Environmental Protection Division  
Watershed Protection Division  
[EPDcomments@dnr.ga.gov](mailto:EPDcomments@dnr.ga.gov)

**Re: ORK and CRK Comments on Draft Construction Stormwater General Permits (GAR100001, GAR100002, GAR100003)**

Ogeechee Riverkeeper's (ORK) mission is to protect, preserve, and improve the water quality of the Ogeechee River basin, including the Canoochee River and the coastal and tidal rivers of Liberty, Bryan, and Chatham Counties. ORK works with local communities to share and collect information on the ecological and cultural importance of rivers and streams throughout the Basin, and use that information to amplify the voices of those who speak for the watershed. One of ORK's primary roles is as watchdog on new land development projects throughout the watershed that could pose a significant threat to water quality.

Chattahoochee Riverkeeper (CRK) is a non-profit environmental advocacy organization dedicated to the protection and stewardship of the Chattahoochee River, its tributaries and watershed. CRK represents approximately 10,000 members who use and enjoy the river system and depend on the Chattahoochee River and its lakes as a source of drinking water.

ORK and CRK offer these comments on the Georgia Environmental Protection Division's (GA EPD) proposed revision to its three Construction Stormwater General permits. Compliance with these permits, and ultimately the Clean Water Act, should focus on water quality measures and outcomes rather than mere adherence to procedures. Likewise, ORK has comments on specific language changes as well as reversions to previous permit language.

**Results over Procedure**

These general permits should emphasize water quality protections rather than procedural actions. As National Pollution Discharge Elimination System (NPDES) permits, their goals are to ensure compliance with state water quality standards meant to implement the Clean Water Act. To effectively achieve the outcome-driven goal of restoring and maintaining the chemical, physical, and biological integrity of Georgia's waters, these three permits must also be outcome-driven. Water quality results - the maintenance and recovery of Georgia's treasured waters - should be the focus of these permits.

Instead, the three General Construction Stormwater permits emphasize rigid adherence to procedures over actual downstream water quality protections. Compliance with the Clean Water Act is confirmed through installing and maintaining best management practices (BMPs). While these activities help to reduce erosion, sedimentation, and pollution inherent to regulated construction activities, ORK is not confident that the current system focused mainly on selecting, implementing, and monitoring these BMPs sufficiently protects Georgia's waters from water quality degradation. Permit requirements must go beyond mere procedure and show that permitted activities do not harm downstream waters and aquatic environments. Without results-focused requirements, as well as accompanying enforcement, Georgia's public trust duties and its expected oversight role as a state authorized to enforce the Clean Water Act come into question.

ORK and CRK call for results-oriented stormwater permitting and oversight for construction sites. Robust monitoring and sampling requirements, as well as active oversight and enforcement, are necessary for confirming water quality protections. Through preconstruction baselines, and continued upstream and downstream sampling of potentially-impacted water quality parameters during construction, permittees will clearly show the effectiveness of their BMPs in preventing water quality impacts directly attributable to their permitted activities. Without broad monitoring and sampling, measurable compliance with the Clean Water Act and Georgia's state water quality standards is not realistically possible.

Water quality protections are even more questionable without active oversight and enforcement from GA EPD. Simply requiring BMPs without consistently confirming their effective implementation makes it nearly impossible to ensure water quality is not being degraded by permitted activities. As such, GA EPD must take specific efforts to confirm not just BMP implementation but also effectiveness. Permittee monitoring and state confirmation can work in concert to ensure Georgia's waters are sufficiently protected. Absent that cooperation or numerical confirmation, GA EPD must show, beyond simply procedural compliance, that water quality is not harmed by any individual permitted construction activity. Without that confirmation, ORK and CRK are not confident that these General Construction Stormwater permits effectively implement the Clean Water Act.

#### Comments on specific revisions

1. Include clarifying definitions to provide common language for all stakeholders

In earlier versions of the proposed permits' revisions, GA EPD proposed definitions for "BMP maintenance," "BMP failure," and "sediment impacts" in Part III.D of the three permits. Due to stakeholder feedback, these revisions were removed and the 2018 permit language was maintained.

ORK calls for GA EPD to include definitions of these concepts. Stakeholder confusion about these definitions highlight that "BMP maintenance," "BMP failure," and "sediment impact" are already unclear concepts. Establishing a definition will allow all stakeholders - permittees, state officials, and the impacted public - to have the same understanding of expected maintenance and effective operation of BMPs and when

action needs to be taken around sedimentation issues. We call on GA EPD to provide definitions for “BMP maintenance,” “BMP failure,” and “sediment impacts.”

2. GAR100003: Secondary permittee NOI/NOT requirements

While GA EPD has revised the stakeholder draft permit to include that secondary permittees include a signed certification statement in the Erosion, Sedimentation and Pollution Control Plan, we are still concerned about multiple revisions to the permit which result in the removal of the requirement for secondary permittees to sign and submit Notices of Intent (NOI) and Notices of Termination (NOT) to GA EPD. We disagree with these revisions and we believe that the language requiring NOIs and NOTs for secondary permittees should remain in the permit. We are concerned that this is a major permit revision that will result in substantial confusion for both permittees and regulators. Without a signed NOI and NOT, compliance responsibilities regarding primary versus secondary permittees could become unclear resulting in non-compliance and problems with legal enforcement.

Additional Requested Revisions

1. Establish upper lot size limit for permit coverage

These general permits authorize stormwater discharges from projects that are greater than one acre, (and less than one acre for common development using secondary). However, there is no upper limit on the lot size of construction sites. These general permits are less effective at addressing the site-specific issues that larger construction projects bring. Likewise, large construction projects have the potential to create larger water quality impacts. We recommend that GA EPD establish an upper lot size limit, requiring that any project that will impact more than 50 acres be required to obtain an individual NPDES permit.

2. GA EPD should affirmatively approve all applications prior to permittees receiving coverage

Under these current general permits, applicants automatically receive permit coverage fourteen days after submitting their NOI. We request that GA EPD affirmatively approve each applicant’s NOI and accompanying Erosion, Sedimentation and Pollution Control Plan before those applicants receive coverage under these general permits. GA EPD has the duty of ensuring effective implementation of the Clean Water Act. We are concerned that automatic coverage could result in construction activities that insufficiently manage stormwater.

3. Permittee’s Erosion, Sedimentation and Pollution Control Plans should be made publicly available

Upon GA EPD approval of an applicant’s NOI under the general construction stormwater permits, we request that the site-specific Erosion, Sedimentation and Pollution Control Plan be made available to the public. This will allow the public to assist GA EPD in ensuring that all plans are effectively and consistently implemented during all construction activities. Inclusion of these plans on GEOS, or on a GA EPD-hosted webpage will allow all interested stakeholders to easily access these important plans.

Thank you in advance for your time and consideration. If you have any questions regarding this letter, please contact ORK at: [ben@ogeecheeriverkeeper.org](mailto:ben@ogeecheeriverkeeper.org) or 866-942-6222 x9 and CRK at [julseth@chattahoochee.org](mailto:julseth@chattahoochee.org)

/s/

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