

Erosion and Sedimentation Control Procedures

PREAMBLE

The Environmental Protection Division has developed procedures to govern internal processes to implement various activities required under laws, rules and permits for the control of erosion and sedimentation (E & S). These procedures cover only a subset of all EPD E&S activities and do not represent EPD's total work efforts. This document will periodically be updated as additional procedures are developed. The activities included in these procedures were identified by EPD as those needing clarification to ensure consistent implementation. There are other EPD E&S activities for which EPD is now developing detailed procedures.

The following procedures are based on the current laws, rules, NPDES General permits and the following principles:

1. Erosion and Sedimentation control programs must have a local focus. EPD will never have sufficient staff to replace local programs.
2. EPD must instill a strong will in local governments to control erosion and sedimentation.
3. EPD should support local programs, especially through education and guidance.
4. Local Issuing Authorities (LIAs) are the first line of enforcement; EPD is the enforcement backstop.
5. If EPD investigates a site and finds violations, we must seek enforcement actions which may include penalties.
6. EPD must prioritize our work, since we would quickly be overwhelmed if we did not.
7. EPD must retain fairness and common sense in implementing this program.
8. EPD must be consistent.
9. A high priority is educating local governments, developers and consultants on identifying streams for buffer protection.
10. The Board zero-tolerance policy applies to wastewater (treatment plants and sewers) violations, not to Erosion and Sedimentation Control Act violations.
11. No procedures can cover all situations and EPD must make site-specific judgments.

The procedures are presented in the form as answers to specific questions generated by EPD.

1. What enforcement sequences should EPD follow when we decide to enforce? For example, should EPD propose fines in a Consent Order without first sending a Notice of Violation (NOV)?

Most erosion and sedimentation related enforcement actions are the appropriate resolution of violations identified during a complaint investigation. In most cases, issuance of a NOV prior to proposing penalties in a consent order is not practical from a resource and environmental impact perspective.

A NOV is an appropriate action when EPD inspects/evaluates and

- Documents MINOR violations/deficiencies by a FIRST OFFENDER; and
- Identifies no environmental impacts; and
- Violations are timely corrected; or
- Failure to pay appropriate fees to EPD, if such fees are paid timely after EPD issues the NOV

An Order is an appropriate response when EPD inspects/evaluates and

- Documents violations that resulted in environmental impacts (significant sediment reaching stream); and/or

- Identifies a stream buffer encroachment; and/or
- Violation is a repeat offender; and/or
- Failure to submit NOI

Issuance of a NOV is not required prior to proposing a Consent Order.

Penalties will be consistent statewide and based upon rationale to be developed by an EPD work group and approved by the Director.

2. What are EPD's obligations for issuing Stop Work Orders (SWOs) in general and more specifically in those areas covered by a Local Issuing Authority (LIA)?

EPD has the authority to issue Stop Work Orders in areas covered by a LIA and in areas not covered by a LIA.

For areas with a LIA, EPD will follow the procedures under Item 4. If the LIA fails to resolve the violation(s), EPD will then act as if there is no LIA, as described below.

Where there is no LIA, EPD issues Stop Work Orders pursuant to the procedures of O.C.G.A. 12-7-12. A Stop Work Order directs the violator to cease working on the project, to stop all land disturbing activity, other than that required to maintain and improve BMPs, until EPD gives authorization to resume.

EPD may cooperatively and quickly negotiate a consent order, which stops the work immediately, or may issue a stop work administrative order without up-front negotiation.

If the Stop Work Order is an Administrative Order, the order will be effective immediately, but EPD will inform the violator of the right to appeal within 30 days. An appeal, however, does not stay the Stop Work Order.

Under 12-7-12(d), EPD is obligated to issue a Stop Work Order if the criteria of (d) are present. The above procedure meets this obligation. However, if full compliance is achieved very quickly prior to issuance of a Stop Work Order, a Stop Work Order may not be necessary, but EPD will pursue penalties under a Consent Order, if appropriate.

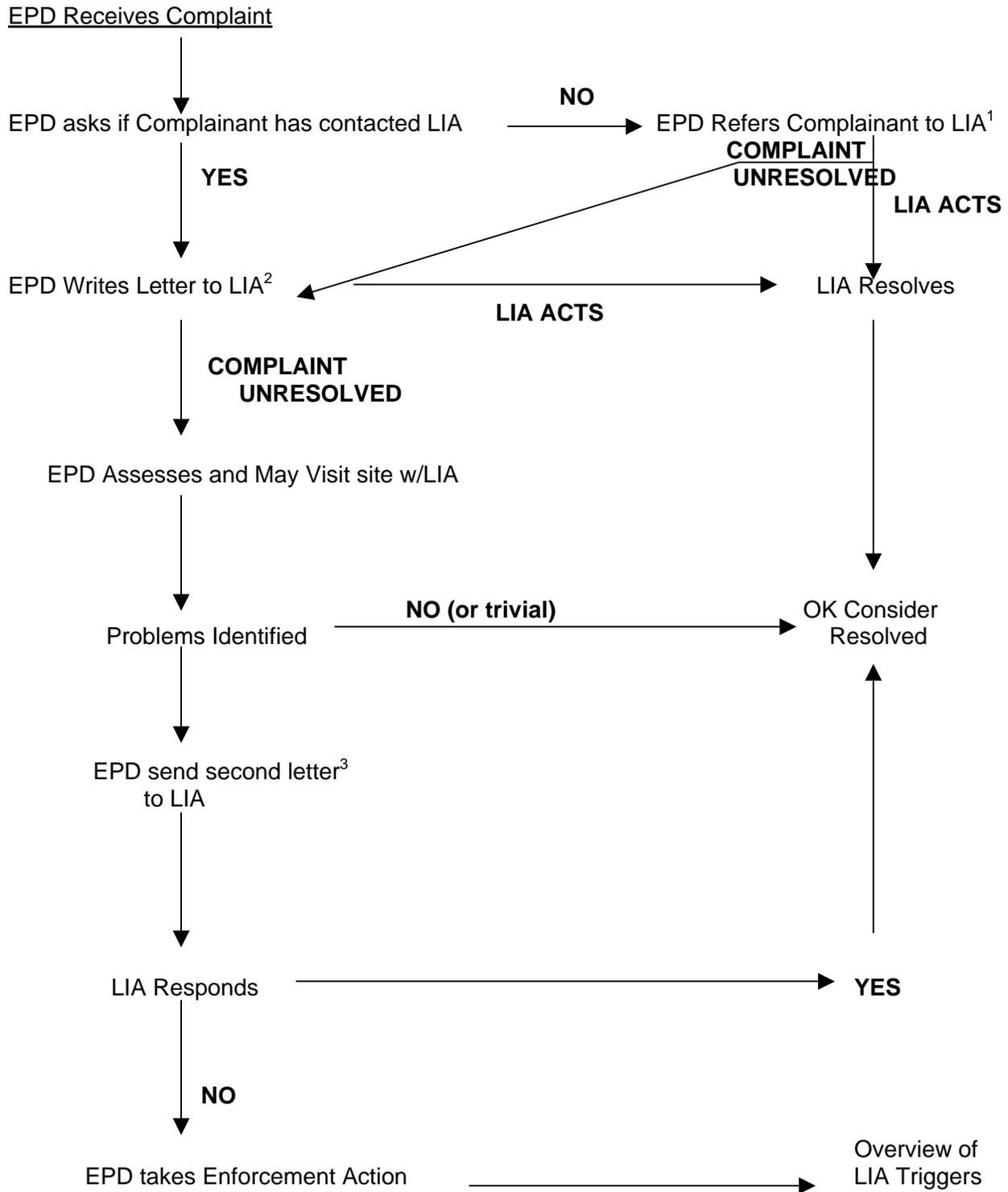
EPD will develop detailed criteria for issuance and rescission of Stop Work Orders.

3. What actions will EPD take for unauthorized land disturbing activity in the stream buffer where the LIA failed to enforce or where there is no LIA?

- A. EPD will first stop the activity in the buffer with the appropriate action (letter, order, etc.)
- B. In cases where land disturbing activity in the buffer is complete a Consent Order should be executed that:
 1. Includes a financial penalty based on EPD rationale; and
 2. Requires restoration of buffer area
- C. In cases where land disturbing activity is incomplete a Consent Order should be executed that:
 1. Requires permanent stabilization to be installed immediately.
 2. Includes a financial penalty based on EPD rationale; and
 3. Stops all land disturbing activity in the buffer pending completion of variance process (application/review/approval/denial) for remaining land disturbing activity or additional encroachment.

D. If the violator refuses to enter into a Consent Order, EPD will issue an Administrative Order with provisions C(1) and C(3) above, and request a civil penalty hearing.

4. What are EPD procedures for resolving E&S complaints received where there is a LIA?



¹EPD will provide contact information to complainant and instruct them to call EPD back if they get no response from LIA

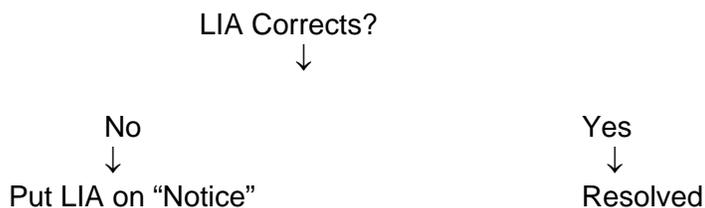
² First letter (from the District Office) will have consistent format statewide. Letter will (1) advise LIA that EPD received a complaint; (2) Provide details of complaint; (3) Require action by LIA within 5 business days.

³Second letter (from the District Office) will (1) be addressed to Mayor, or City/County Manager and include a cc: to LIA staff person (2) refer to Rules and note enforcement action appears warranted (3) require action by LIA and response to EPD within 5 business days.

5. What actions will EPD take for stream buffer encroachments where the LIA has issued a LDA permit which inappropriately allows a buffer encroachment?

- A. Basic premise: Educate LIAs upfront; including upcoming guidance on identification of state waters needing buffer protection
- B. EPD response to Developer: No penalty
- C. EPD Response to LIA:

- Notify LIA in writing that approved land disturbing activity appears to be a violation and ask for resolution and a report to EPD
- Require plan to correct procedures for future permits



EPD requires LIA to meet and discuss and train

For Metro Planning District LIAs, send letter advising status may affect issuance of new or expanded water permits

- Failure to enforce stream buffer requirements is an overview trigger. Repeated failures will be a basis for decertification.
- In cases where incompetence or inappropriate actions by the design professional may have caused LIA's failure to protect stream buffer, EPD will forward a complaint to the professional registration board asking for an investigation of the design professional.

D. EPD will not issue a water quality 401 certifications for projects encroaching into stream buffers unless a variance is issued.

6. Should EPD “overrule” a LIA that determines something is minor land disturbing activity that does not require permitting?

- A. If the LIA determines a land disturbing permit is not required, but EPD disagrees, EPD will advise the LIA, and follow a process similar to that in 5.
- B. If the LIA issues a permit that EPD views as not required, EPD will respect and support the LIA’s decision. EPD will review and act upon requests for stream buffer variance on such projects.

7. How should EPD respond to a request by a Local Issuing Authority for help in general and specifically for enforcement action to address a site that they are having difficulty gaining compliance?

EPD will provide the requested assistance; the request should be in writing on LIA letterhead.

8. Does “land disturbing activity” for non-silvaculture/agriculture projects begin when trees are cut or when stumps are removed?

Reserved, pending input from the Department of Law.

9. How should EPD proceed on overviews and decertifications of LIAs?

EPD will continue to conduct overviews of LIA programs. LIAs will be selected for overview based on information on performance of the LIA provided primarily by the District offices.

LIAs will be decertified if they fail to implement a proper E&S program, but will be given time to correct problems first.

EPD will use other mechanisms that will raise awareness of the deficiencies to a higher level to achieve improvement without decertification:

- letters from the director
- public exposure (web, press release)
- in north Metro district, deny issuance of new or expanded water permits