



FOLLOW-UP REVIEW • REPORT NUMBER 22-07 • NOVEMBER 2022

EPD Enforcement – Selected Water Programs

Actions taken to address most audit findings

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Why we did this review

This follow-up review was conducted to determine the extent to which the Environmental Protection Division (EPD) of the Department of Natural Resources has addressed recommendations presented in our August 2020 performance audit (Report #17-08).

The audit examined EPD's efforts in permitting regulated entities; monitoring compliance through reporting, inspections, and complaint investigations; and initiating formal and informal enforcement actions.

About EPD Enforcement

EPD's regulatory framework consists of permitting, compliance monitoring, and enforcement activities. EPD staff in the central office and six districts conduct these activities to ensure regulated entities follow standards. Regulated entities include publicly- and privately-owned facilities, such as power plants, wastewater treatment plants, storm sewer systems, and dams.

EPD regulates approximately 500 high hazard dams, 2,400 public water systems, 1,400 wastewater facilities, and 2,400 stormwater systems.

EPD Enforcement – Selected Water Programs

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What we found

The Environmental Protection Division (EPD) has taken action to fully or partially address issues identified in our 2020 performance audit, which reviewed compliance and enforcement activities for select water resource and protection programs. EPD has continued to use compliance assistance strategies and has escalated enforcement to increase compliance with reporting requirements. In addition, it expanded training opportunities and updated guidance related to oversight, penalties, and data entry.

The General Assembly has not taken recommended actions to authorize a fund source to help private dam owners cover costs of meeting permitting requirements or additional permit fees to support compliance and enforcement activities in some water programs.

Permitting

During our original audit, EPD was behind in its inventory schedule for 1,700 of the 3,900 Category II dams. Since the original audit, EPD has re-inventoried more than 67% of dams within a five-year period, an increase from 56% in 2018. EPD still believes the five-year statutory timeframe for re-inventorying Category II dams is appropriate; therefore, it has not pursued changes to the requirement.

The General Assembly has not authorized a fund source for required engineering studies and dam repairs. In addition, it has not required EPD to reassess the current division of responsibilities to ensure Category I (high hazard) dams meet permitting requirements. However, concerns about unpermitted high hazard dams may be somewhat alleviated—the Federal Emergency Management Agency has awarded funds to rehabilitate these structures and reduce risk.

Compliance Monitoring

Our original report noted that some inspection practices limited EPD's ability to detect dam and stormwater violations. EPD continues to use compliance assistance strategies (e.g., reminders, informational materials) and has escalated enforcement to encourage compliance with reporting requirements. These strategies led to increased compliance among dam owners (as reported in our original report) and industrial stormwater facilities. In addition, enhanced inspection practices should minimize risks associated with owner-led dam inspections and facilitate a risk-based approach to construction stormwater inspections. EPD has not taken a risk-based approach to inspections of municipal sewer systems. Instead, EPD elected to continue its commitment to inspect each of the 170 systems within five years, which it has generally met.

Enforcement Actions

In our original report, we noted that there were limitations in systems designed to track and monitor drinking water, municipal and industrial stormwater, and wastewater violations. This prevented a consistent means for ensuring informal and formal enforcement methods were: 1) occurring consistently; 2) occurring in a timely manner; and 3) effective in returning entities to compliance or appropriately escalated. Since then, EPD has enhanced its enforcement and data entry guidance, trained all staff on enforcement, and enhanced/established monitoring controls to ensure systems contain complete and accurate information.

Our report also found that penalty assessment procedures had not been developed for all program areas, lacked key attributes suggested by the U.S. Environmental Protection Agency (EPA), and were out of date. Since then, EPD has established a penalty methodology for the Safe Dams Program (the only program lacking a process at the time), and procedures for wastewater and stormwater programs have been updated to incorporate key components of EPA's penalty guidance.

Management

Our original report found that improvements in data management and additional outcome metrics would enhance EPD's ability to evaluate the effectiveness of compliance and enforcement efforts across various EPD units around the state. While EPD has not modified systems containing compliance and enforcement information, it has taken other actions to improve the completeness and accuracy of major data systems. For example, EPD expanded its guidance and training opportunities and management reviews of the data. EPD also noted that it is evaluating an integrated data system that could promote efficient compliance and enforcement actions and oversight. Though considered, EPD determined that no additional metrics are necessary.

EPD's Response: EPD indicated its agreement with the current status of all relevant findings (Findings 1 through 7). EPD did not comment on Finding 8, which is directed to the General Assembly.

The following table summarizes the findings and recommendations in our 2020 report and actions taken to address them. A copy of the 2020 performance audit report 17-08 may be accessed at [EPD Enforcement – Selected Water Programs](#).

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Original Findings/Recommendations	Current Status
<p>Finding 1: Despite staffing increases and shifting some responsibilities to dam owners since our 2000 performance audit, some dams have not been inventoried, studied, or permitted as required.</p> <p>At the time of our report, EPD’s Safe Dams Program was behind the five-year inventory schedule for more than 1,700 Category II dams, and nearly 600 had not been inventoried in more than 10 years. Additionally, approximately 200 Category I dams were unpermitted because some owners did not submit completed permit applications. EPD staff noted private owners may have difficulty paying for engineer studies or repairs to meet permitting requirements.</p> <p>We recommended that EPD evaluate and document the risk associated with exceeding the five-year timeframe for re-inventorying Category II dams as required by law. We also recommended the General Assembly consider alternatives for ensuring Category I dams meet standards, such as creating a fund source that would provide financial assistance to private dam owners or transferring certain responsibilities from dam owners to EPD.</p>	<p>Partially Addressed – EPD has increased the number of Category II dams re-inventoried within the five-year timeframe established by state law. The General Assembly has not taken action to address concerns about private dam owners’ ability to pay for engineering studies and dam repairs necessary to meet standards, though federal sources may provide some relief.</p> <p>EPD staff continue to believe it is appropriate for the statute to require EPD to re-inventory all Category II dams within five years. For the 2017-2021 cycle, EPD reported that 2,600 (67%) of the approximately 3,900 Category II dams had been re-inventoried within the required five-year time period (compared to 56% at the time of the previous report).</p> <p>Prior to the release of our original report, the General Assembly appropriated \$1.2 million in bond funds to pay for assessments of state-owned dams. However, it has not taken additional action to assist private owners of Category I (high-hazard) dams. Given the high cost of engineering studies and dam upgrades necessary to bring Category I dams into compliance, we recommended the General Assembly consider options to assist dam owners.</p> <p>While no state-funded financial assistance program has been established, some dam owners are eligible to participate in a grant program through the Federal Emergency Management Agency (FEMA) to rehabilitate certain high hazard dams. Under the Rehabilitation of High Hazard Potential Dams grant program, dam owners receive technical, planning, design, and construction assistance for eligible rehabilitation activities that reduce dam risk and increase community preparedness. In 2019 and 2020, FEMA awarded a total of \$1.4 million to EPD, which then awarded grants to eligible subrecipients. Grants can be used to cover up to 65% of eligible costs; the remaining 35% must be covered by non-federal funds.</p>

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Original Findings/Recommendations	Current Status
<p>Finding 2: Inspection and reporting practices have limited EPD's opportunities to detect dam and stormwater violations.</p> <p>We found that while EPD had inspection and reporting requirements in place, EPD's inspection program for Safe Dams was not consistent with best practices. Additionally, dam owners were not performing reporting activities as required by EPD regulations. Finally, more frequent inspections and reports could increase EPD's opportunity to identify potential issues before they become more serious.</p> <p>We recommended that EPD continue to use available compliance assistance strategies and enforcement processes (and escalate as appropriate) to ensure dam owners and industrial stormwater facilities comply with reporting requirements. Additionally, we recommended that EPD assess and document risks associated with 1) owner-led dam safety inspections and 2) municipal stormwater facilities that have never been inspected by EPD. Finally, we recommended that EPD consider the feasibility of using a risk-based approach to inspections for municipal stormwater and construction stormwater, given its limited resources.</p>	<p>Partially Addressed – EPD has continued to utilize compliance assistance strategies and escalated enforcement to ensure reporting requirements are met. While it has enhanced inspection processes for the Safe Dams and construction stormwater programs, it has not changed its approach to inspecting municipal stormwater systems.</p> <p>Prior to the original report's release, EPD indicated that it had begun implementing compliance assistance strategies (such as outreach) and escalated enforcement for the Safe Dams Program, which increased dam owners' compliance with reporting requirements (e.g., annual reports and emergency action plans). Facility compliance also increased after EPD initiated the industrial stormwater compliance assistance strategy (e.g., email reminders, brochure, other informal outreach). For example, approximately 70% of annual reports were submitted on time in 2021, up from 40% in 2019.</p> <p>EPD also enhanced some inspection processes since the original audit. According to EPD, it assessed the risk of owner-led dam inspections and determined it to be an appropriate method. EPD also developed written procedures for quality assurance reviews of owner-led inspections to provide additional oversight. These procedures require EPD staff to compare quarterly reports for Category I dams to prior reports to determine whether changes occurred and identify noncompliance. EPD stated it is also implementing a schedule for staff to periodically inspect all Category I dams to supplement the owner-led and engineer inspections.</p> <p>EPD now applies a risk-based approach to construction stormwater inspections. An alternative compliance monitoring strategy approved by the EPA allows EPD to inspect a minimum of 5% of stormwater permittees under its jurisdiction. Selection of sites is based on greatest potential to impair water quality and complaints. EPD elected not to use a similar risk-based approach to inspections of municipal stormwater systems. Instead, EPD adheres to its agreed-upon approach of annually inspecting 20% of systems within a five-year time period. Under this approach, EPD has inspected all municipal stormwater systems but one, which will be inspected within five years of its 2019 designation.</p>

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Original Findings/Recommendations	Current Status
<p>Finding 3: Data entry and system limitations prevent a full evaluation of the effectiveness of EPD's enforcement efforts.</p> <p>During the original audit, we were unable to determine whether informal or formal enforcement actions were taken for all violations in the drinking water, wastewater, and stormwater programs. In addition, the effectiveness of any enforcement actions taken could not be assessed due to data system limitations and limited guidance material. EPD's primary data systems did not always reflect what enforcement actions were taken or whether entities ultimately returned to compliance. In addition, because EPD had not developed guidance outlining reasonable time periods for taking enforcement action, timeliness of enforcement actions taken could not be determined.</p> <p>We recommended that EPD consider establishing additional controls to ensure enforcement actions are appropriate, consistent, and timely, such as more specific enforcement guidance. In addition, we recommended that EPD review its information systems to ensure accuracy and completeness of violations and enforcement activity data. Finally, we recommended that EPD assess the feasibility of amending the Georgia Pollution Discharge Elimination System (GAPDES) data system to include a field to capture return to compliance for each violation.</p>	<p>Fully Addressed – EPD has taken steps to ensure 1) enforcement actions are appropriate, consistent, and timely; 2) data systems contain complete, accurate and timely information, including enforcement activity data and compliance status; and 3) data systems appropriately capture facilities' return to compliance following enforcement actions..</p> <p>Since the time of our review, EPD enhanced its enforcement and data entry guidance. This includes updating standard operating procedures (SOPs) for entering inspections, violations, spills, and enforcement actions into GAPDES. EPD also updated its templates for inspection reports and those for enforcement actions, including the letter of noncompliance, notice of violation, consent order, and administrative order. To supplement these guidance documents, EPD indicated that it trained all program staff on the elements and process of escalating enforcement, the sources of EPD enforcement authority, and methods to ensure effective and consistent enforcement.</p> <p>In addition to the data entry SOPs discussed above, EPD enhanced monitoring controls to ensure the data entered into its systems are accurate and complete. According to EPD, quarterly data reviews and a comprehensive annual review of all compliance and enforcement data by EPD supervisors and managers help ensure staff entries are timely, accurate, and complete.</p> <p>According to EPD, it reviewed information systems used to track violations and enforcement activity and concluded that the systems are capable of maintaining and disseminating information appropriately. Thus, instead of amending GAPDES to include a "return to compliance" field to capture compliance status as recommended, EPD indicated that it elected to use the existing "closed date" field associated with each enforcement action to track facilities' return to compliance. According to EPD, tracking return to compliance by enforcement action, rather than violation, facilitates the enforcement escalation process.</p>

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Original Findings/Recommendations	Current Status
<p>Finding 4: While most water programs reviewed have documented methods for assessing settlements or penalties for noncompliance, improvements are needed to ensure methods are established for all program areas, incorporate key attributes, and are up-to-date.</p> <p>At the time of our review, we found that EPD had not developed penalty assessment procedures for the Safe Dams Program. Additionally, calculation methodologies for some other programs were either missing key components suggested by the EPA (e.g., economic benefit of noncompliance) or had not been recently updated.</p> <p>We recommended that EPD establish settlement/penalty procedures for the Safe Dams Program. In addition, we recommended EPD periodically review and update settlement/penalty amounts and calculation methodologies, as well as consider formally incorporating key components of EPA's penalty framework into its calculation methods. Finally, we recommended that EPD consider implementing additional controls to ensure factors considered in penalty decisions are applied consistently, such as documenting the calculation and rationale for any adjustments made during the negotiation process.</p>	<p>Fully Addressed – EPD updated penalty amounts and calculation methodologies for the Safe Dams Program—as well as the municipal, industrial, and construction stormwater water programs—and incorporated key components recommended by the original audit. EPD stated that it regularly reviews the remaining water programs' penalty amounts and calculation methodologies.</p> <p>Prior to the release of our original report, EPD established settlement/penalty procedures and amounts for the Safe Dams Program. EPD incorporated violation history into the Safe Dams Program penalty calculation by providing a past actions multiplier of 1.5 if there was a previous violation, and 2 if there were two or more previous violations. The gravity of the violation is also considered, with a severity of action multiplier for the penalty amount.</p> <p>EPD created the Water Quality Penalty Assessment Guidance in December 2019 (updated in 2021), which covers penalties associated with wastewater and stormwater violations. According to the guidance, penalty amounts consist of a base amount and an additional amount depending on gravity of the violation. In addition, the guidance outlines factors to consider when adjusting penalties (upwards or downwards), such as economic benefit of noncompliance, ability to pay, response to the violation, and history of noncompliance. Other relevant factors may also be considered when adjusting penalty amounts, such as a credit for Supplemental Environmental Projects (projects included as part of an enforcement settlement that provide a tangible environmental or public health benefit).</p> <p>EPD has also updated its supplementary documents, which address some additional concerns identified in the original report. For example, EPD staff use the penalty calculation summary to document gravity calculations, any adjustments and associated rationales, and final penalty amounts. In addition, EPD updated the construction stormwater calculation spreadsheet to include more current costs used to calculate the benefit of noncompliance. At the time of the original report, cost estimates had not been updated since 2004.</p>

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Original Findings/Recommendations	Current Status
<p>Finding 5: Improvements in data systems and data management practices are needed to ensure EPD management has adequate information for monitoring compliance and enforcement activity and assessing overall effectiveness.</p> <p>Our original report found that data were not always accurate and complete in the primary systems used to document violations and enforcement actions (e.g., the Georgia Pollutant Discharge and Elimination System, or GAPDES). Additionally, separately maintained systems and tracking/reporting tools did not interact with primary data systems.</p> <p>We recommended that EPD improve the completeness and accuracy of the major data systems. EPD should consider identifying feasible, cost-effective modifications to its systems to prevent common errors and correct linkage problems across data systems. Until systems are modified, we recommended EPD 1) continue to expand training opportunities and guidance materials; 2) conduct management reviews of the data to evaluate completeness and accuracy; and 3) identify common errors to be addressed in training and guidance documents.</p> <p>We also recommended that EPD consider implementing a more integrated data system that could enhance management oversight of compliance and enforcement activities and performance indicators.</p>	<p>Fully Addressed – EPD has taken action to improve the completeness and accuracy of the information maintained in its data systems. While EPD has not modified existing systems to address linkage issues across data systems, it is considering an integrated system for compliance and enforcement data.</p> <p>As previously discussed, EPD offered training opportunities and updated SOPs to ensure proper data entry by staff. EPD hosted a Lunch and Learn in October 2020 for staff on the “how and why of GAPDES data entry.” This session provided tutorials on entering inspection, violation, and enforcement actions into GAPDES, as well as how to link these actions to facilitate a comprehensive review of compliance and enforcement efforts. For example, our original report identified instances of enforcement actions lacking a corresponding violation, making it difficult to determine whether an enforcement action was appropriate and timely. According to EPD, the SOPs and Lunch and Learn session were developed to address the most common data entry issues. EPD indicated that additional sessions may occur for new staff.</p> <p>EPD also enhanced management reviews to evaluate the completeness and accuracy of data. For example, EPD supervisors and managers conduct quarterly and annual reviews of compliance and enforcement data to ensure it is timely, accurate, and complete, as previously discussed. In addition, EPD is finalizing a formal internal document that dictates how supervisors and managers should review all complaint data in its Complaint Tracking System to ensure all complaints are resolved timely and completely.</p> <p>EPD stated that it is evaluating an integrated data system that could promote efficient compliance and enforcement actions and oversight, though no timeframe for finalizing its decision was provided. In addition, EPD began a pilot project that will allow staff to see the permit status of sites, as well as their compliance history and owners. According to EPD, this could potentially eliminate the need to enter the information into GAPDES.</p>

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<p>Finding 6: With improvements in management information, establishing additional performance metrics would enhance EPD’s ability to demonstrate the results of its compliance and enforcement efforts.</p> <p>Our original report noted that while EPD had performance measures, it had not compiled a comprehensive set of outcome-based measures to track the overall effect of its compliance and enforcement activities.</p> <p>We recommended that EPD consider establishing additional performance measures, particularly outcome metrics, to communicate the results of its enforcement efforts and guide decision-making.</p>	<p>Partially Addressed – While staff indicated it has considered the recommendation, EPD maintains its position that outcome metrics are not necessary. Thus, no metrics specifically designed to communicate results have been added.</p> <p>As indicated in its response to the original report, EPD has more than 50 existing performance measures related to its water programs. According to EPD, it made process improvements related to the method and frequency that various existing metrics are reported. EPD indicated that stormwater compliance and enforcement metrics are reported monthly to ensure inspection goals are met and reports are sent in a timely manner. In addition, EPD reported that a new spreadsheet was developed to track wastewater compliance activities and escalating enforcement.</p>

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<p>Finding 7: Comprehensive, up-to-date guidance would better support EPD staff's efforts to carry out its compliance and enforcement duties.</p> <p>Our original report identified opportunities for EPD to update guidance to reflect current practices, centralize and clarify relationships between multiple, similar guidance documents, document specific expectations on enforcement responses, and develop program specific guidance for safe dams.</p> <p>We recommended that EPD provide complete and updated guidance covering key functional areas related to compliance and enforcement. This could be accomplished through either the division-wide guide or program-specific guides.</p> <p>Additionally, we recommended that EPD compile all policy memoranda, operating standards, and other guidance documents; determine which are still applicable and which are not; and organize them into a complete set of activity and management instructions either as part of the division-wide guide or another centralized location.</p>	<p>Fully Addressed – EPD has taken action to establish more complete, centralized documentation to better support EPD staff's compliance and enforcement duties.</p> <p>Since our review, EPD developed and updated division-wide and program-specific guidance. Examples are discussed below.</p> <ul style="list-style-type: none"> • According to EPD, it developed a division-wide inspector training document that was distributed to every inspector and manager in May 2020. The document includes sections for laws and regulations, records, inspections, enforcement, complaint tracking, data systems for each branch, and training requirements for each program. All new employees involved in inspections receive a copy of the document during on-boarding. • EPD created the Water Quality Penalty Assessment Guidance in December 2019 (updated in 2021), as previously discussed. This guidance outlines the criteria for determining civil penalties associated with wastewater and stormwater violations. • As previously noted, EPD updated its formal compliance and enforcement documentation, such as inspection templates for industrial stormwater and general consent order templates. • For the Safe Dams Program, EPD developed an SOP for quality assurance reviews of owner-led inspections to provide additional oversight, as discussed earlier. • EPD updated some safe drinking water reference documents. For example, EPD revised the Minimum Standards for Public Water Systems, which became effective in March 2021. In addition, EPD worked with the Georgia Environmental Finance Authority to develop an SOP for Drinking Water State Revolving Fund projects, which was completed in January 2021. <p>In addition, EPD consolidated documents into a single platform so that all SOPs, training videos, and guidance documents are maintained in one location and easily accessible to all employees. EPD stated that it has started recording training sessions for new employees or existing employees who may require it.</p>

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Original Findings/Recommendations	Current Status
<p>Finding 8: With the exception of the construction stormwater program, Georgia has not kept pace with other states in assessing permit fees for other water regulatory programs.</p> <p>Our original report noted that EPD did not impose fees for its municipal and industrial stormwater, municipal and industrial wastewater, and drinking water programs.</p> <p>We recommended that the General Assembly consider:</p> <ul style="list-style-type: none"> a. establishing permit fees for water-related programs in state law, which could be used to cover the cost of compliance and enforcement activities; or b. granting EPD the legal authority to establish fees using its rulemaking authority. 	<p>Not Addressed – The General Assembly has taken no action on this recommendation. As such, the construction stormwater program is the only program with associated fees. As noted in the original report, permit fees for other regulatory programs would allow EPD to generate additional revenue to help offset the cost of permitting, compliance, and enforcement efforts.</p>
<p>8 Findings</p>	<p>4 Fully Addressed</p> <p>3 Partially Addressed</p> <p>1 Not Addressed</p> <p>0 No Recommendations</p>

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