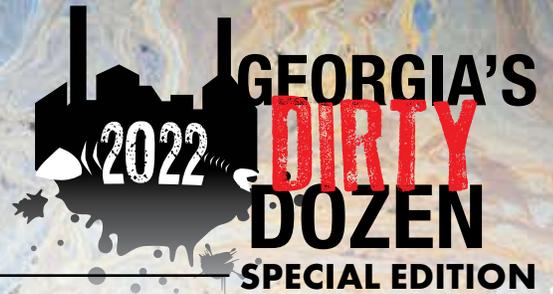


Celebrating the Clean Water Act's Impact on GEORGIA'S WATER



DRISCOLL V. ADAMS

Downstream Neighbors Set Precedent With Fight Over Mud In Union County

INTRODUCTION

If mud from a development site washes on to your property and damages it, is that a violation of the Clean Water Act? In 2022, we know that it is, but in the mid-1990s, the legal waters were a little muddy on this issue. When a pair of Union County residents found their ponds filling with mud after an upstream neighbor cleared 75 acres of steeply-sloped forest, they set in motion a conflict between neighbors that would ultimately clarify that mud, sand and sediment are pollutants regulated under the Clean Water Act, and property owners who fail to prevent such pollutants from entering adjacent property or nearby streams are liable for damages. The conflict was one of the first stormwater cases litigated in Georgia; and the six-figure ruling in favor of the plaintiffs got the attention of homebuilders and developers across the state.

THE WATER BODY

Spiva Branch Creek, the creek that was at the heart of the dispute between Union County neighbors, is one of the few streams in Georgia whose water ultimately flows to the Mississippi River. Part of the Tennessee River basin, Spiva Branch spills into the Nottely River which flows some 50 miles north to join the Hiwassee River in North Carolina. Along the way it is dammed to create Lake Nottely, a 4,180-acre Tennessee Valley Authority reservoir and popular tourist destination. The TVA has consistently graded the ecological health of the lake as "poor" due to low oxygen levels, high chlorophyll levels, and lack of macroinvertebrates that form the basis of the aquatic food chain. Stormwater, including sediment-laden runoff from construction sites, can contribute to these problems. The Nottely is home to two state protected fish species in the sicklefin redbreast and blotched chub as well as the Hiwassee crayfish which is found only in the waters of the Nottely and Hiwassee rivers.

THE CASE

In the mid-1990s, lawsuits over stormwater pollutants were a rarity. The public—attorneys and judges included—thought pollutants were what came out of the end of pipes at sewage treatment plants and industries. The notion that pollutants could wash off land, flow



Sediment pollution from construction stormwater affects humans through increased costs of treating drinking water, decreased property values and impacts to aesthetic and recreational enjoyment of the state's water bodies.



A dragonfly emerges from its nymph stage at water's edge. Sediment pollution from construction sites impacts dragonfly nymphs and other aquatic insects that form the base of the aquatic food chain by covering stream bottoms in thick mud. Dragonflies, mayflies, caddisflies and stoneflies live much of their life cycle in rivers and streams before emerging from the water to transform into the flying insects more familiar to us.

downstream during a rain storm and damage streams and property was poorly understood. Dirt, a pollutant? Unheard of.

At that time Georgia's regulation of dirt and mud in stormwater from land development projects was in its infancy, and this fact further complicated this case. When the defendant, Ross Adams, cleared his land there was no clear requirement that developers obtain approval or a permit from state regulators.

Thus Adams argued that because no permit was available he couldn't be held liable for the pollutants. He further argued that the dirt that washed on to his neighbors' property was not a pollutant because it didn't come from a pipe or "point source." And he claimed that because Spiva Branch didn't flow year round, it wasn't a "navigable" stream and thus was not protected under the Clean Water Act.

Initially, the district court agreed with Adams, and a frustrated Don Stack, the attorney for the plaintiffs, lamented the court's ignorance when it came to water pollution.

"They thought it (the law) was for toxic crap coming out of pipes, not dirt," he said.

The case was not without drama outside the courtroom. The judge assigned federal marshals to protect Stack after the defendant threatened him with bodily harm.

On appeal, Stack successfully educated the courts, and won a judgment of \$400,000 for his clients. The court ruled that dirt was a pollutant; that Congress intended the law to apply to water bodies that would not be deemed "navigable" under the classical understanding of that term; and regardless of the availability of permits, the Clean Water Act clearly prohibited discharges of any pollutant by any person.

The ruling rocked the world of home builders and commercial real estate developers, and soon, Stack was making the rounds at conferences and gatherings of these interests, explaining the law and their responsibilities under it.

"The ruling got people taking stormwater seriously," he said, "They understood they were liable for the pollution that leaves their sites."

Soon after the ruling, Georgia regulators finalized the permitting system for stormwater generated from land clearing activities. Now, anyone developing more than an acre of land must obtain a state permit and have a plan in place to protect adjacent property and streams by keeping dirt on the site.

Stack kept on filing stormwater suits, dozens over the next two decades, and the judgments in those cases reinforced the original verdict: dirt was, indeed, a pollutant.

The attorney eventually purchased a cabin in Union County not far from the site of his landmark stormwater case. His plaintiffs in that case, now his nearby neighbors, dubbed the home the "Ross Adams Memorial Cabin" in recognition of the volatile defendant in the case.



Today, homebuilders know that before they begin moving dirt, they must first obtain a Clean Water Act permit by documenting what practices they will use to keep dirt on the construction site and out of neighboring property and streams. In the mid-1990s, however, that requirement wasn't as clear. As one of the first construction stormwater cases to be heard in Georgia, *Driscoll v. Adams* put homebuilders and developers on notice.

FOR MORE INFORMATION

Don Stack, Stack & Associates,
dstack@stackenv.com, 404-525-9205



GEORGIA
WATER
COALITION