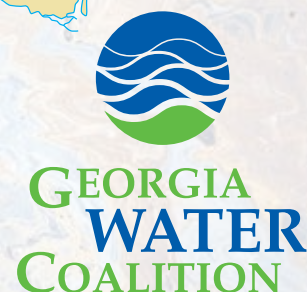


**GEORGIA'S  
2022 DIRTY  
DOZEN**  
SPECIAL EDITION



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



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

## **GEORGIA WATER COALITION'S 2022 DIRTY DOZEN REPORT**

### Highlighting 50 Years of Progress Under the Clean Water Act

For the past 11 years, the Georgia Water Coalition's Dirty Dozen report annually has highlighted the worst offenses to the health of Georgia's water. This year will be different. On the 50th anniversary of the passage of the federal Clean Water Act, the Dirty Dozen report traces Georgia's landmark Clean Water Act legal cases that have enabled significant restoration of the state's streams, rivers, lakes and estuaries.

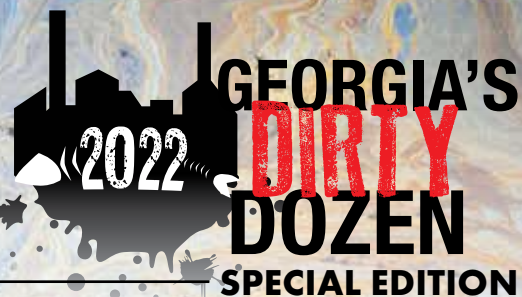
Ask any Georgia Water Coalition member, and they will tell you Georgia's water is cleaner today than it was in 1972; they'll also tell you there's still work to be done.

Pollution problems persist.

Despite federal actions aimed at forcing both the City of Atlanta and DeKalb County to fix aging sewage systems, raw sewage still flows into metro area streams and rivers. Likewise, rampant land development still sullies neighborhood streams—and fishing holes—with tons of sediment and mud, escalating the costs of treating drinking water drawn from our waterways. And despite education efforts by both state regulators and non-profit watershed protection groups, many industrial facilities still fail to prevent polluted stormwater from fouling local streams. Emerging pollutants are also challenging the strength of the Clean Water Act as communities across the nation—including many in Georgia—grapple with per- and polyfluoroalkyl substances—PFAS. The manmade chemical used in making stain resistant carpet and fireproof textiles (among many other uses), persists in the environment and has been linked to multiple health problems in humans.



Georgia is home to more than 70,000 miles of rivers and streams, 425,000 acres of reservoirs and along the coast, five large estuaries surrounded by some 400,000 acres of marshes.



When the Clean Water Act was passed in 1972, there were no local citizen watershed protection groups in Georgia; today, there are more than 30 local organizations focused solely on protecting a specific water body, including multiple organizations working to protect the Okefenokee Swamp from a proposed heavy mineral sands mine.

Recently, the Clean Water Act, itself, has come under attack from nationally-elected leaders influenced by industry, mining, agriculture and development interests seeking to limit which water bodies are protected under the act. Those attacks have recently greased the wheels for a controversial mining proposal in Charlton County to begin operation near the Okefenokee Swamp, threatening that globally-significant natural wonder.

Yet, the long arc of progress made under the Clean Water Act is nonetheless remarkable. Georgia headlines of the late 1960s and early 1970s attest to the struggle to stem pollution from industries and municipal sewage treatment facilities.

Three months before the Act's passage, discharges from the City of Columbus's sewage treatment facility killed



Initially, the Clean Water Act was focused on eliminating “end of the pipe” pollution at sewage treatment plants and industrial facilities, but lawsuits brought by citizens and river protection groups have clarified that the law also regulates non-point source pollution like dirt and mud that washes off construction sites during heavy rains.

In 1972, local river or watershed protection groups did not exist in Georgia. Today, there are more than 30 local organizations focused solely on protecting a specific water body. The Georgia Water Coalition represents more than 280 entities across the state working together for policies that protect Georgia’s water.

In this report, the Georgia Water Coalition recognizes 12 landmark legal decisions that have furthered the goals of the Clean Water Act in Georgia. They include cases that forced municipalities to upgrade their sewer infrastructure; demanded compliance from industries; confirmed stormwater runoff as a pollutant regulated by the Act; elevated the Act’s importance in the protection of wetlands; and even forced the federal government into compliance with its own landmark law.

The majority of these legal decisions were initiated by citizens and grassroots organizations who demanded clean water. That’s thanks to a provision in the law that allows citizens to sue polluters when state and federal regulators fail in their duties.

The Act’s “citizen suit” provision has perhaps resulted in the most significant strides toward healthy rivers in Georgia. When mud messes up their property, when sewage sullies their boating paths, when industries destroy their fisheries, Georgians have bravely faced public scrutiny—and even physical harm—to force polluters to clean up their act. This report tells those stories.

30,000 fish in the Chattahoochee River. A 1970 report of the Georgia Water Quality Control Board described the Chattahoochee downstream of Atlanta as “near septic in condition.” At the same time on the Savannah River, consumer crusader Ralph Nader’s “Raiders” were exposing pollution from the world’s largest paper mill, describing the river in downtown Savannah as boiling with “hydrogen sulfide and methane gas.” Blue crabs in the river’s estuary were deemed unfit for human consumption. In Dalton, pollution from carpet mills was so pronounced that it soon forced downstream communities to cease drawing their drinking water from the Oostanaula River. Nationally, only one third of the country’s waters were considered safe for fishing and swimming.

It was against the backdrop of these widespread water pollution problems that Georgians said enough was enough. In the gubernatorial election year of 1970, the *Columbus Ledger* editorialized: “It’s politically smart this summer to promise...a program that will rid Georgia of water, air and land pollution.” That local support for environmental legislation in Georgia and elsewhere elevated the issue to national importance—among both republican and democratic leaders.

In 1972, when President Richard Nixon vetoed the Clean Water Act over concerns about the initial \$24 billion in spending associated with the bill, the Senate and House responded to popular sentiment and voted to override his veto. In a show of bipartisanism, the Senate voted 52-12 to override while the House voted 247-23. More than 110 Republican legislators broke with the president to pass the landmark legislation.

Since the Clean Water Act’s passage, Georgians have watched their streams, rivers, lakes and estuaries—in most cases—steadily improve. What’s more, the Clean Water Act’s goal of making all the nation’s water bodies swimmable and fishable has been embraced by the populace.

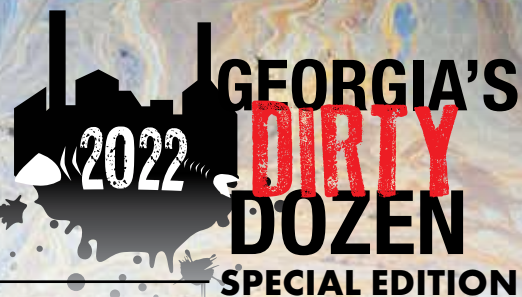


Since the passage of the Clean Water Act, Georgians have watched the health of their streams, rivers, lakes and estuaries—in most cases—steadily improve. Pollution from sewage treatment plants and industrial facilities has largely been stemmed, but still not all of Georgia’s water bodies are deemed “swimmable and fishable”—the stated goal of the legislation.



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



## ALMA V. UNITED STATES

### U.S. Environmental Protection Agency Invokes Rarely-Used Veto Power to Stop Lake Proposal in South Georgia's Alma

#### INTRODUCTION

Alma, seat of Bacon County with just 3,433 residents in sparsely populated southeast Georgia, seems a most unlikely place for a proposed multi-million dollar recreational reservoir. But in 1966 when President Lyndon B. Johnson's administration pushed through legislation creating the Model Cities program, a bold experiment aimed at renewing urban areas and ending poverty, Alma was inexplicably named one of 150 cities selected for the experiment. (It's all about who you know: A local resident who had served as a secretary for a Senate committee that Johnson once chaired wrote a letter to the president endorsing Alma's inclusion.) Over the next two decades, the federal government pumped \$36 million into Alma, including \$1.2 million for the design of a 1,400-acre reservoir created by damming Hurricane Creek. Proponents argued the reservoir would enhance nearby public housing projects and provide recreational opportunities for surrounding communities. The saga of "Lake Alma" spanned more than two decades and included legal action by local citizens fighting the proposal; waffling by federal agencies over environmental permits; and full-throated endorsements of the project by state agencies. Finally, in 1988, the U.S. Environmental Protection Agency (EPA) invoked a rarely used portion of the Clean Water Act, allowing the agency to veto the project. In the 50-year history of the Clean Water Act, the federal agency has used its veto power only 13 times.

#### THE WATER BODY

Hurricane Creek, like many blackwater streams coursing through South Georgia, is a labyrinth of water and woodlands that represents an iconic landscape of the region. The creek forms the headwaters of the little-known Alabaha River which flows some 21 miles past the city of Blackshear in Pierce County to join the Satilla River. Though small in size, the Hurricane Creek drainage is home to 106 fish species, 96 species of reptiles and amphibians, 232 species of birds and 48 species of mammals. River otters and beavers, swallow-tailed kites and prothonotary warblers, water moccasins and striped crayfish snakes, Atlantic sturgeon and swamp darters all make their homes in and along Hurricane Creek and the Alabaha River.



In 1988, the U.S. Environmental Protection Agency invoked a rarely used provision within the Clean Water Act to stop a proposed recreational reservoir to be constructed on Hurricane Creek in Alma. The action protected some 1400 acres of bottomland forest common to South Georgia's blackwater streams and rivers.

## THE CASE

It is rare that EPA invokes its veto power under the Clean Water Act. In the 50-year history of the law, the federal agency has used its Section 404 (c) power only 13 times, and only twice in the last 32 years. Its use is limited to projects that would degrade municipal water supplies or result in the "significant loss of or damage to fisheries, shellfishing, wildlife habitat or recreation areas."



In vetoing Lake Alma, the U.S. Environmental Protection Agency cited the project's impacts on wildlife. Studies showed that Hurricane Creek and its bottomland forests were home to 106 fish species, 96 species of reptiles and amphibians, 48 species of mammals and 232 varieties of birds, including yellow crowned night herons.

Alma and Bacon County, which reaped the benefits of its Model City status to develop an industrial park, upgrade its water and sewer facilities, expand its airport, modernize its hospital and build hundreds of low-cost housing units, found its community divided over the reservoir, and the war stories from one of South Georgia's first "environmental battles" are legendary.

Among the reservoir's earliest and staunchest opponents was Delano Deen, who passed away earlier this year. A professor of chemistry at South Georgia College for 30 years and owner of property along Hurricane Creek, he said the fight became personal when his father, agitated over the condemnation of his land, suffered a heart attack and died the day before he was scheduled to deliver an address opposing the reservoir on a local radio broadcast.

After a federal court upheld EPA's veto in 1990, the younger Deen told the *Atlanta Constitution*, "A lot of people are still seeing Lake Alma as this beautiful blue body of water that would have been the answer to all our prayers, but they'll never understand what a disaster it would have been."

In the case of Lake Alma, it was the above-mentioned critters that carried the day. After more than two decades on the table, in 1988 EPA scrapped the reservoir project, determining that the "vegetated wetland habitat" surrounding Hurricane Creek was "vital" and that the reservoir would have "unacceptable adverse impacts to wildlife."

The City of Alma appealed EPA's veto, but in 1990, the veto was upheld in U.S. District Court, thus ending a 34-year effort to build Lake Alma.

The reservoir would have long since been built if not for a small group of local residents who opposed the project. Initially, local citizens took legal action to force the U.S. Department of Housing and Urban Development, the federal agency funding the reservoir, to conduct an Environmental Impact Statement. Then, in 1983, the Hurricane Creek Protective Society and Georgia Wildlife Federation won another legal battle when it sued because federal agencies had failed to issue proper environmental permits for the project.

These actions delayed the project long enough for EPA, which had first approved construction of the dam and reservoir, to rethink its position. Despite the full endorsement of Georgia's Department of Natural Resources which wanted a lake built for boating and fishing in the area, EPA stood firm.

Today, the 1,400 acres of wetlands and woods that would have been inundated remain untouched.



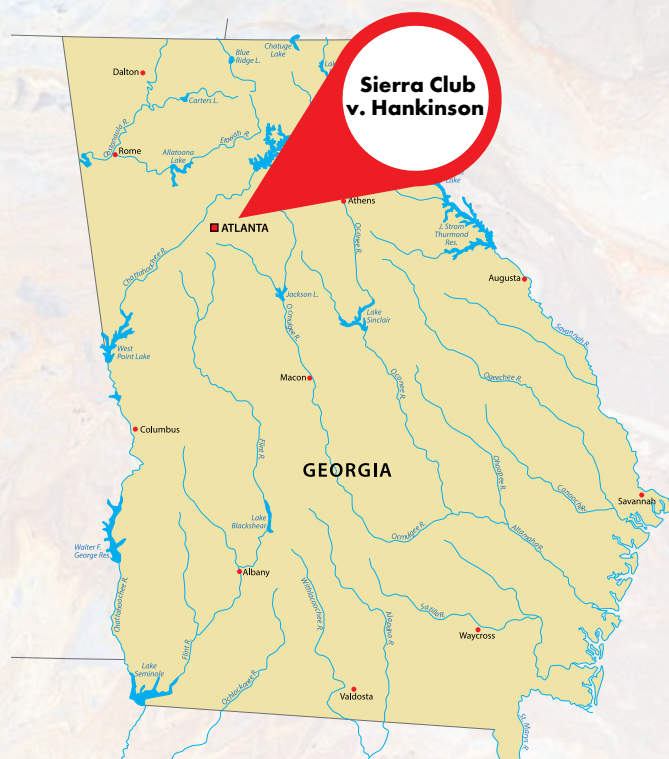
Hurricane Creek is part of the Satilla River watershed. It feeds the little known Alabama River which then flows into the Satilla River in Pierce County. Known for its blackwater and snow white sandbars, the Satilla is a popular boating and fishing destination.



GEORGIA'S  
**DIRTY**  
DOZEN  
SPECIAL EDITION

# Grassroots Groups Force State and Federal Agencies To Abide Clean Water Act

The year was 1994, the Clean Water Act was 22 years old, and in Georgia, a key component of the law—identifying polluted waters and developing cleanup plans for them—had hardly begun. While neighboring states had teams of more than 100 people working on clean water, Georgia’s Environmental Protection Division (EPD) had just 20 people assigned to clean water compliance and enforcement. In fact, the state’s program to monitor streams for pollutants was so anemic, that by 1994, only two cleanup plans (known as Total Maximum Daily Loads or TMDLs) had been submitted to federal regulators. That’s when a coalition of grassroots citizen watershed protection groups (Georgia Environmental Organization, Coosa River Basin Initiative and Ogeechee River Valley Association) and national organizations, including the Sierra Club and Trout Unlimited, sued the federal government for failing to enforce its own law, allowing Georgia regulators to shirk their duties under the Clean Water Act. Ultimately, the plaintiffs won, setting in motion the tedious but necessary work of monitoring Georgia’s 70,000 miles of streams and rivers for pollutants and developing plans to correct pollution problems.



Georgia is a water rich state. More than 70,000 miles of streams and rivers drain the state's land and feed some 425,000 acres of reservoirs. Along the coast, five large estuaries are fringed by some 400,000 acres of coastal marshes. These water bodies, along with underlying groundwater, provide our drinking water. At sewage treatment plants and industrial facilities, our waterways assimilate our treated waste. And, along their courses where we fish, boat and recreate, they support an outdoor recreation economy that generates an estimated \$27.3 billion annually in consumer spending and \$1.8 billion in state and local taxes. And, for many, these waterways provide sustenance in the form of fish and shellfish.

While one of the core provisions of the Clean Water Act was to regulate and cleanup discharges from the pipes of municipal sewage treatment



A water quality monitoring station on the South River in Atlanta attests to the progress that Georgia has made since 1996 when Judge Marvin Shoob ruled that the state must begin full implementation of its TMDL program and develop cleanup plans for polluted streams.

plants and industrial facilities, the Act included the more lofty goal of evaluating individual streams on a holistic level to determine what specific pollutants were in the water and how these streams could be restored. The process takes time and manpower. In the early 1990s, Georgia leaders were investing little in either.

Doug Haines, the lead attorney for the plaintiffs in *Sierra Club v. Hankinson*, told the *Atlanta Constitution* at the time: "This represents slumbering agencies at their worst."

During hearings, Haines and fellow attorney, Eric Huber, encountered a David v. Goliath experience. The attorneys with the Georgia Center for Law in the Public Interest were met by a bevy of attorneys from the federal and state governments along with what Haines called lawyers representing a "panoply of moneyed interests."

The case was open and shut. Judge Marvin Shoob who ruled for the plaintiffs noted that at its current pace, "Georgia will take more than hundred years to comply with the Clean Water Act."

Since that ruling, hundreds of cleanup plans for polluted streams have been developed by the state. Unfortunately, many of these TMDLs have become merely paper plans collecting dust on office shelves. Meanwhile, the magnitude of the task of testing all of the state's 70,000 miles of waterways remains overwhelming. In 2022, EPD assessed 2,976 miles of streams and found that of those about half did not meet state water quality standards

Haines, who considers the ruling among his biggest legal victories but has lamented some of the failures of its implementation, said, "It was kind of like if your star child grows up to wait tables."

On the whole, however, the TMDL process has been a success. Failing septic tanks have been fixed, cattle have been fenced out of streams, tons of chicken litter has been properly handled, wastewater treatment plants have eliminated more pollutants from their effluent and scores of citizens have learned how they can prevent water pollution.

In the Coosa River system, because of the TMDL process, more than 30 sewage treatment facilities were required to dramatically reduce phosphorus discharges to the system to prevent algal blooms on Weiss Lake in Alabama. Collectively, they achieved a 30 percent reduction to help restore the downstream reservoir.

On the Savannah River, Georgia and South Carolina regulators worked cooperatively with more than 20 municipal and industrial dischargers between Augusta and Savannah to improve oxygen levels in the Savannah harbor.

And because of the TMDL process, over the past 15 years, Georgia's Environmental Protection Division (EPD) has developed computerized river models that aid the agency in prioritizing areas where reductions in pollutant loads are needed.

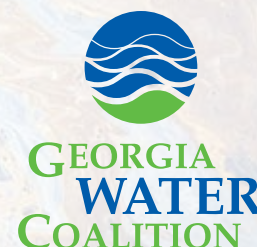
Nearly three decades after the case, one the great ironies was that the plaintiffs, in suing the U.S. Environmental Protection Agency, named the agency's regional administrator John Hankinson as the defendant. Hankinson, a clean water advocate who was well respected among Georgia's environmental community, later told Haines: "My mother said: 'I thought you were doing good things for the environment. Why is Trout Unlimited coming after you?'" Hankinson passed away in 2017 at the age of 68.



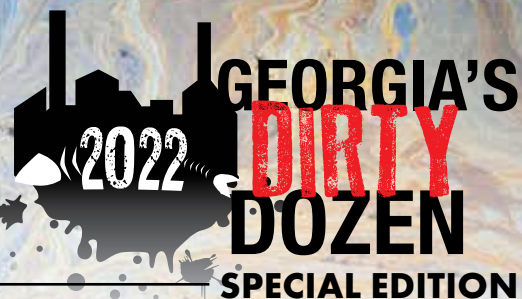
The U.S. Army Corps of Engineers dissolved oxygen injection system operates on the banks of the Savannah River. The facility injects oxygen into the river to support habitat for aquatic wildlife, including federally protected fish species. The Savannah River TMDL for dissolved oxygen forced more than 20 municipal and industrial dischargers to work to reduce their impact on the river and prompted the construction of this facility to mitigate impacts from the deepening of the Savannah Harbor.

## FOR MORE INFORMATION

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



## **UPPER CHATTAHOOCHEE RIVERKEEPER V. CITY OF ATLANTA**

### Lawsuit Filed by River Advocacy Group Forces Atlanta to Clean Up Its Sewer System

#### **INTRODUCTION**

From the 1960s through the 1990s, the Chattahoochee River downstream from Atlanta was often described as an “open sewer.” Until the late 1970s when upgrades to Atlanta’s largest sewage plant were finally completed, an estimated 50 million gallons of untreated sewage was diverted directly to the river each day. Into the 1990s and early 2000s, rain events in Atlanta sent a combined brew of stormwater from the city’s streets and sewage spilling into the city’s creeks and on to the river. State regulators cautioned citizens not to recreate in the Chattahoochee, and West Point Lake, some 65 miles downstream, was plagued by algal blooms. Residents of LaGrange, which pulled its drinking water from the lake, complained of their tap water’s odor and taste. Meanwhile, state and federal environmental regulators seemed content to issue ineffective fines and let the city continue to pollute. The upstart Chattahoochee Riverkeeper entered this septic fray in 1994 intent on forcing the City of Atlanta to fix its failing sewer and stormwater systems. A year later, the non-profit organization filed suit under the Clean Water Act’s citizen suit provision and by 1998, the city agreed to a consent decree that led to a \$2 billion investment in the city’s sewer and drinking water infrastructure. Now, two decades later, the river downstream of Atlanta has been revived. Recreational boaters and anglers have returned and the improved conditions have spawned riverfront development and a push to create a multi-modal public recreation corridor from Atlanta to Coweta County.

#### **THE WATER BODY**

For all the river does for the human populations of Georgia and Alabama—serving up drinking water for some five million residents, receiving the treated sewage of that same population, providing the water to power a nuclear power plant and three other electric generating facilities, and servicing two major pulp mills and countless other industries—the Chattahoochee is nonetheless a treasure trove of aquatic biodiversity. It is home to 104 fish species,



Since the early 2000s, the health of the Chattahoochee downstream from Atlanta has improved dramatically and boaters and anglers are beginning to return to a river that was once considered “dead.” The volume of sewer overflows in Atlanta has been reduced by 99 percent and bacteria levels in the river are 80 percent lower than levels measured in the 1990s.

24 species of aquatic turtles, 37 species of salamanders and sirens, about 30 species of frogs and toads and historically as many as 45 species of freshwater mussels. Upgrades to metro Atlanta's sewer systems have improved water quality and habitat downstream such that the fish and the anglers that pursue them are returning. Where once the 60-mile stretch of river between Peachtree Creek and Franklin had only two public boat ramps, today there are seven...and people are using them.

## THE CASE

After decades of failing to keep its sewer infrastructure on pace with the city's growth, the City of Atlanta was finally forced by Chattahoochee Riverkeeper's lawsuit to fix its aged sewage and stormwater system.

The lawsuit specifically targeted five combined sewer overflow (CSO) treatment facilities that were failing to adequately treat the brew of sanitary sewage and stormwater that overwhelmed Atlanta's sewer system during rain events. Outfall from these facilities made the streams they spilled into unsafe due to elevated bacteria levels and that danger extended downstream to the Chattahoochee.

The court found that the City of Atlanta violated the Clean Water Act on multiple fronts, and the lawsuit concluded with the city agreeing to a consent decree that required the city cease the pollution by updating its sewer system by 2014. The decree also ordered the city to pay a civil penalty of \$2.5 million, invest \$2.5 million in stream cleanups and spend some \$25 million on acquisition of public greenspace along both the Chattahoochee and the South River.

Since the lawsuit, the City of Atlanta has invested nearly \$2 billion in upgrades to its sewer, stormwater collection and drinking water infrastructure. The volume of sewer overflows in the city has been reduced by 99 percent, and bacteria levels in the river are 80 percent lower than levels measured in the 1990s. Except during periods of heavy rain when stormwater runoff increases bacteria levels, the river downstream from Atlanta regularly meets bacteria standards. Algal blooms on West Point Lake have dissipated and the lake routinely meets state water quality standards for chlorophyll a, an indicator of algae in the lake.

The improved water quality has impacted how the region's residents interact with a stretch of river that was once considered "dead." In Smyrna, Riverview Landing, a mixed-use community with apartments and businesses overlooking the river and a city park with river access, has transformed a former industrial site. In the last two decades, three public parks have been developed on the river's banks: Chattahoochee Bend State Park in Coweta County, Bushhead Shoals Park in Heard County and Moore's Bridge Park in Carroll County. The river below Atlanta now supports a commercial sport fishing guide and canoe and kayak outfitters. What's more, downstream communities like Fairburn, Union City and Palmetto are now set to begin withdrawing drinking water supplies directly from the river—something that would have been unthinkable 30 years ago.

All this was made possible because the Clean Water Act's citizen suit provision enabled a grassroots citizen-based advocacy group to force corrective action where state and federal environmental regulators had failed.

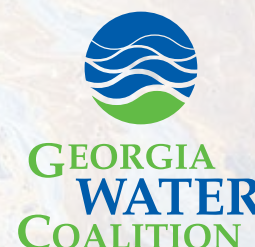
While the transformation has been remarkable, the City of Atlanta still has more yet to accomplish. In 2012, the deadline for completing the sewer upgrades mandated by the consent decree was extended to 2027.



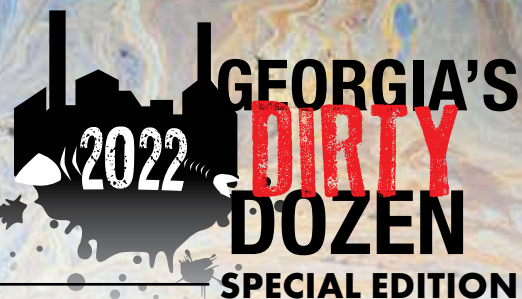
Upper Chattahoochee Riverkeeper's (now Chattahoochee Riverkeeper) Clean Water Act lawsuit against the City of Atlanta forced the city to comply with the federal law and initiated \$2 billion in sewer infrastructure projects including an 8.5-mile tunnel capable of storing 177 million gallons of untreated sewage. The tunnel dramatically reduced combined sewer overflows that plagued the city's sewer systems during rain events and polluted the Chattahoochee with fecal bacteria.

## FOR MORE INFORMATION

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



## UNITED STATES AND THE STATE OF GEORGIA V. DALTON UTILITIES

### Carpet Capital's Sewage Woes Illustrate Pitfalls of Land Application Systems, Forever Chemicals

#### INTRODUCTION

In Dalton, known as the “Carpet Capital of the World,” the 1970s and 1980s were heady days. More than 50 carpet mills churned out shag by the millions of square feet, and it was said there were more millionaires per capita in Dalton than any other U.S. city. The late 1980s saw the introduction of stain-resistant carpet, and with this miracle product, the future looked bright for the carpet capital. But in the midst of this boom, pollution from the carpet mills decimated the Conasauga River. Effluent routinely turned the river the color of carpet dyes; the pollution was so bad that in the early 1980s the downstream city of Calhoun spent millions building a new drinking water intake on the nearby Coosawattee River rather than continue drawing water from rivers polluted by upstream industries. Finally, in the early 1980s, prompted by the Clean Water Act and the federal funds made available through the legislation, Dalton embarked on an ambitious effort to upgrade its sewage system. The project—blessed by both state and federal environmental regulators as the “wave of the future” in wastewater treatment—involved spraying treated sewage and sewage sludge on thousands of acres of fields and forests along the Conasauga River. The land, it was believed, would absorb nutrients and further purify the water before it reached any water body. Less than two decades after the system began operation, the same state and federal regulators that initially blessed the system, sued its operator, Dalton Utilities, for polluting the Conasauga River. More than 20 years after resolution of that case, pollution from the same land application system is still vexing downstream water users and calling into question the efficacy of land application systems for industrial and municipal waste.

#### THE WATER BODY

The Conasauga and the river it flows into, the Oostanaula, are known for their rich aquatic biodiversity. Part of the larger Upper Coosa River basin, no other river system in North America has a higher percentage of endemic species than does the Upper Coosa. Thirty species of mussels, snails, crayfishes and fishes can be found in the waters of the Coosa and nowhere else on Earth. Federally protected snails and mussels including the interrupted rocksnail, Coosa moccasinshell and Georgia pigtoe and fishes like the Conasauga logperch,



In a recent study of some 300 rivers in 11 southern states, the Conasauga ranked as the seventh most imperiled watershed because of its rich biodiversity. The larger Upper Coosa River Basin has a higher percentage of endemic aquatic species (30 species that are found nowhere else in the world) than does any other river system in North America. Species that can be found in the Conasauga River, include the bronze darter, and the washboard mussel.

trispot darter and amber darter all find homes there. In a recent study of some 300 river systems in 11 Southern states, the Conasauga ranked as the seventh most imperiled watershed because of its rich biodiversity. Northwest Georgia's and Northeast Alabama's human population is also dependent upon clean water flowing in these rivers. Rome, Georgia, along with Centre and Gadsden, Alabama all secure their drinking water from these streams originating in Northwest Georgia.

## THE CASE

The optimism that accompanied the construction of Dalton Utilities' land application system is tragically ironic. Touting the "technology" that would allow Mother Nature to complete treatment of Dalton's sewage, the then general manager of the utility told reporters in 1986: "When in full operation, Dalton's discharge...into the Conasauga River will be zero. I'm sure the people in Rome, who get our water, will appreciate that."

Though the system eliminated the direct discharge of inadequately treated industrial and municipal sewage and improved the health of the Conasauga and Oostanaula rivers, multiple failures of the system soon drew the attention of regulators.

During the first 20 years of its operation, Dalton Utilities was cited 15 times for significant violations of the Clean Water Act. Finally in 1998, state and federal regulators filed suit after finding that the land application system was, in fact, discharging into the Conasauga through polluted runoff. They further found the system was polluting groundwater.

Dalton Utilities ultimately agreed to a consent decree in which the public utility paid a \$6 million penalty, at the time the largest such fine in the history of the Clean Water Act. The utility also agreed to spend tens of millions upgrading its entire sewer system and improving its methods for applying the sewage to its 9,600-acre site surrounded by a large bend in the Conasauga. The decree also led to requirements that industries provide initial treatment of their wastewater before sending it to the municipal sewer system. Finally, the utility was hit with a \$1 million fine for filing false operating reports required under the Clean Water Act.

Once considered the solution to wastewater pollution, land application systems have fallen out of favor. Problems like those at Dalton and other of the state's more than 200 land application systems, coupled with the recognition that water needed to be returned to its original source for use by downstream communities and wildlife, have led regulators to steer wastewater operators to more traditional facilities with direct discharges to the state's streams and rivers.

Today, downstream water users are still impacted by Dalton Utilities' land application system, ironically by the very chemicals that made possible stain-resistant carpet and continued Dalton's carpet boom in the late 1980s: per- and polyfluoroalkyl substances, known as PFAS. Called "forever chemicals" because they persist in the environment for years, PFAS are linked to multiple negative health impacts in humans. They have been spread on Dalton Utilities' land application system for more than three decades.

Moving into the Conasauga through surface water runoff and likely via groundwater as well, PFAS are now turning up in drinking water supplies downstream in Rome and Centre and Gadsden, Alabama. Those cities have not, as predicted in 1986, "appreciated" Dalton's land application system. Recently, all three have sued Dalton Utilities and multiple carpet and chemical manufacturers in an effort to recoup expenses incurred in upgrading their water treatment systems to remove PFAS.

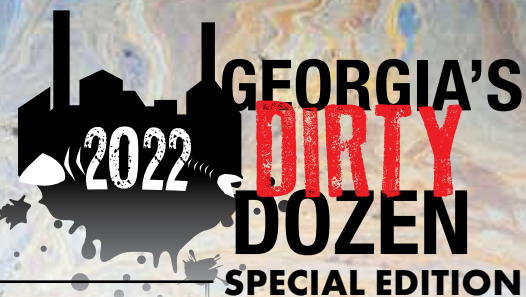


The City of Rome, which draws its drinking water from the Oostanaula River downstream from Dalton, has been impacted by pollution from the carpet capital since the mid-1900s. The city recently sued Dalton Utilities as well as several carpet and chemical companies because of the presence of PFAS in the city's drinking water. The man-made chemicals used to make stain resistant carpet since the late 1980s and linked to negative health impact in humans have been discharged to the Conasauga River for more than three decades.



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# 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

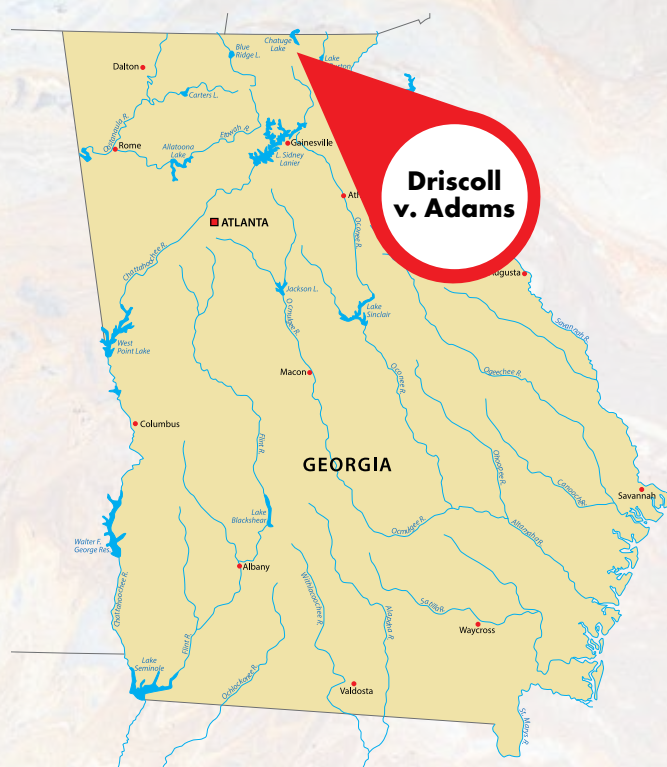
If mud from a development site washes on to your property and damages it, is that a violation of the Clean Water Act? In 2022, we know that it is, but in the mid-1990s, the legal waters were a little muddy on this issue. When a pair of Union County residents found their ponds filling with mud after an 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.

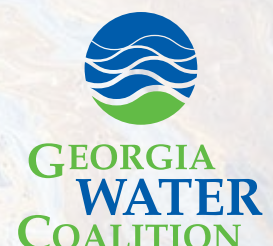
The attorney eventually purchased a cabin in Union County not far from the site of his landmark stormwater case. His plaintiffs in that case, now his nearby neighbors, dubbed the home the "Ross Adams Memorial Cabin" in recognition of the volatile defendant in the case.



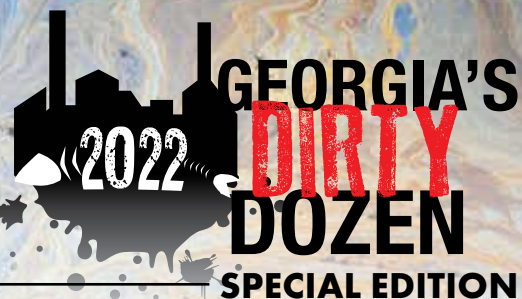
Today, homebuilders know that before they begin moving dirt, they must first obtain a Clean Water Act permit by documenting what practices they will use to keep dirt on the construction site and out of neighboring property and streams. In the mid-1990s, however, that requirement wasn't as clear. As one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

## FOR MORE INFORMATION

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



## **MICHAEL AND LINDA BURKHALTER V. CLAXTON POULTRY FARMS**

After "Paradise" Lost on Canoochee River, Local Citizens Force Poultry Plant to Cleanup, Create Riverkeeper Group

### **INTRODUCTION**

For Linda Smith and her brothers and sisters, the Canoochee River was their summer childhood home. Once school was out in the 1950s and 60s, the family retreated to the cool air by the river bottom and spent their days swimming in the river and their nights sleeping on a soft, snow-white sandbar. But by the late 1990s, the paradise of her youth was lost. Pollution from an upstream chicken processing facility was causing massive algal blooms on the Canoochee, leaving the Smith's family swimming hole covered at times from bank to bank with a thick, slimy floating mat of algae. Armed with courage and a bulky video camera, Smith began documenting the pollution. Her efforts soon attracted the attention of attorneys and a young graduate student at nearby Georgia Southern University who began investigating nitrogen pollution in the river. The Clean Water Act lawsuit filed by the Smith family in 2000 ultimately forced Claxton Poultry to create a new land application system and secured funding to start Canoochee Riverkeeper, a non-profit citizen organization dedicated to monitoring and protecting the river.

### **THE WATER BODY**

A blackwater stream of uncommon beauty lined by moss-draped tupelo and cypress, the Canoochee River winds some 100 miles from near Swainsboro in Emanuel County to its confluence with the Ogeechee River near the Georgia coast in Bryan County. Along its journey, it assimilates the waste of not only Claxton Poultry, but that of the citizens of Statesboro, Metter, Claxton and Hinesville, including the U.S. Army's Fort Stewart. It supports a thriving recreational fishery and provides habitat for two federally protected fish species: the Atlantic and shortnose sturgeons.

### **THE CASE**

More than 20 years after winning her Clean Water Act case against Claxton Poultry, located about five miles upstream from her family's property, Linda Smith still feels the loss of her paradise.

Though the lawsuit resulted in an undisclosed monetary settlement for her



The Canoochee River which flows some 100 miles from near Swainsboro in Emanuel County to its confluence with the Ogeechee River near the Georgia coast in Bryan County, like South Georgia's other blackwater rivers, is characterized by clear, tea-colored water and snow white sandbars. Pollution from Claxton Poultry caused extensive algal blooms that interfered with the use and enjoyment of the river by downstream property owners.



Claxton Poultry processes some 400,000 chickens a day at its facility located along the Canoochee River in Evans County. Pollution from the facility prompted downstream landowners to file a Clean Water Act lawsuit that forced the company to improve its wastewater management and provide funding to start Canoochee Riverkeeper, now Ogeechee Riverkeeper.

But water tests conducted by Ogeechee Riverkeeper downstream from the facility have shown high conductivity levels, an indicator of possibly high nutrient levels. The most likely path of pollution to the river is through groundwater.

Tests conducted in the early 2000s by Chandra Brown as part of her masters degree study at Georgia Southern University showed that nitrogen-rich groundwater—not just surface water—was the largest contributor of pollution in the river, and that those inputs were most significant near Claxton Poultry's original land application spray fields. During low water, especially, nitrogen-rich water can spawn algal blooms.

Despite upgrades to Claxton Poultry's wastewater management system, it is possible the facility is still polluting groundwater which in turn pollutes the Canoochee.

This is significant because in 2020 the U.S. Supreme Court ruled that pollutants entering surface waters through groundwater are regulated under the Clean Water Act. It remains to be seen if this ruling will impact the more than 200 land application systems in Georgia including Claxton Poultry, but such legal decisions show that the 50-year-old landmark environmental legislation continues to evolve, especially through legal challenges brought by citizens.

Brown, who would complete her masters studies at Georgia Southern and become the first Canoochee Riverkeeper, went on to file multiple Clean Water Act lawsuits in that capacity. "This is literally what the Clean Water Act was designed to do," she said. "To allow citizens to step in when the government fails to enforce the law."

family, the establishment of Canoochee Riverkeeper (now Ogeechee Riverkeeper) and a host of stipulations that ultimately led Claxton Poultry to develop a new land application system, she remains convinced the poultry processing facility is still polluting the river.

She said her once snow-white sandbar is discolored and overgrown and the river still shows signs of algae with a black slime coating the sandy river bottom. "It's been like watching someone you love slowly die," she said after a recent visit to the family's sandbar.

In the years following the lawsuit, the company, which processes some 400,000 broilers a day, invested in more than 3,000 acres of land northwest of Claxton along the Canoochee to create a 782-acre hay, corn and cotton farm fertilized daily by some 1.6 million gallons of process wastewater from its nearby broiler operation. The wastewater is sprayed on to fields through an irrigation system.

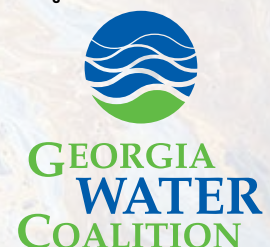
The company insists that this land application system, regulated by Georgia's Environmental Protection Division (EPD), is managed to prevent excessive nutrients from reaching the river.



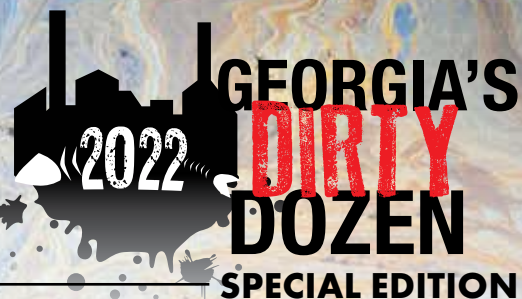
The Canoochee River empties into the Ogeechee River in Bryan County near the Georgia coast. The rivers' moss-draped riversides of tupelo, cypress and hardwoods are an iconic landscape of South Georgia.

## FOR MORE INFORMATION

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



## **OGEECHEE-CANOOCHEE RIVERKEEPER V. U.S. ARMY CORPS OF ENGINEERS**

Lawsuit Stops Harvest of 100-Year-Old Cypress, Prevents Misuse of Clean Water Act Forestry Exemption

### **INTRODUCTION**

When any new law is passed, you can bet that during the sausage-making that is the legislative process, some exemptions to the law will make it into the sausage casing. The federal Clean Water Act was not immune to such machinations. Indeed, normal farming, ranching and silviculture operations that result in the filling of wetlands or streams are not subject to portions of the act. But, as they say, the devil is in the details. In 2006, when homeowners around Cypress Lake near Statesboro decided to harvest some 60 acres of water-bound cypress, blackgum and tupelo trees on their 100-plus-acre amenity lake formed by Lotts Creek, the U.S. Army Corps of Engineers obliged the homeowners by classifying the harvest as "ongoing forestry" despite the fact that there were no plans—or even the ability—to plant new trees or for the trees to naturally grow back for a future harvest. The harvest, the Corps erroneously concluded, could proceed without oversight under the Clean Water Act. That's when Ogeechee Riverkeeper stepped in to say, "not so fast." The outcome of the legal battle helped define exactly what forestry activities are exempt from the Clean Water Act.

### **THE WATER BODY**

Lotts Creek flows some 35 miles through Bulloch County just west of Statesboro, and is one of hundreds of blackwater streams that twist through the low-lying bottomland forests of South Georgia feeding larger blackwater rivers like the St. Marys, Satilla and Ogeechee rivers. The streams' tea-colored water, flanked by snow-white sandbars and dense stands of moss-draped cypress and tupelo lend to the region an iconic landscape. Influenced by regular flooding and soil conditions, these trees are extremely slow-growing, but long-lived. Thus, many of the state's blackwater streams host trees that are hundreds of years old, despite their relative small size. It is along these small streams that generations of Georgians have fished, swam, picnicked and baptized.



Located on Lotts Creek in Bulloch County, Cypress Lake is part of the larger Canoochee-Ogeechee river system which drains some 5,540 square miles of eastern Georgia. Impacts to water quality on small streams like Lotts Creek impact the health of the Ogeechee River all the way to its mouth on the Georgia coast.

## THE CASE

In 2006, Cypress Lake homeowners needed to make repairs to the dam on Lotts Creek that formed their amenity lake and they needed a way to pay for those repairs. A 60-acre stand of cypress, blackgum and tupelo in the shallow portions of the lake was the ticket. The old trees could be felled and mulched for a payout that would cover repairs and create more open water on the lake for boating and fishing.

The U.S. Army Corps of Engineers, the federal agency that oversees the Clean Water Act's wetlands permitting process classified the project as "ongoing silviculture" and washed its hands of any further oversight. But, some Cypress Lake homeowners, alarmed at the harvest of the old-growth trees, contacted Ogeechee-Canoochee Riverkeeper who stepped in to challenge the Corps determination.

The Riverkeeper argued—and the courts agreed—that the harvest was not ongoing because there was no possibility of regeneration at the site. Unlike natural wetlands where periods of drought would allow new trees to germinate, the man-made reservoir stayed wet year round preventing any regrowth.

So, while the Clean Water Act was explicit in exempting certain activities, this case enabled the courts to more narrowly define "ongoing silviculture" and put the very federal agency responsible for making such determinations on notice.

"By offering parameters for what is and is not an ongoing tree farming operation, the Court has given guidance that will protect thousands of acres of wetlands across Georgia and the country," said Brian Gist, an attorney with the Southern Environmental Law Center, which represented Ogeechee-Canoochee Riverkeeper (OCRK).

For the fledgling Riverkeeper organization which had formed just five years earlier, the court ruling made local governments take notice as well. Riverkeeper Chandra Brown recalled a meeting with local officials shortly after the legal victory:

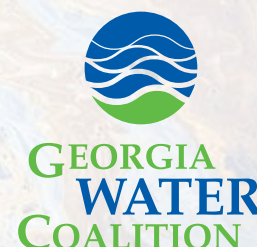
"They told me: 'We used to just ignore you, but when you won a case against the feds, we figure we better start paying attention.' They realized that the citizen suit provision of the Clean Water Act could hold governments accountable when the government doesn't follow the law."



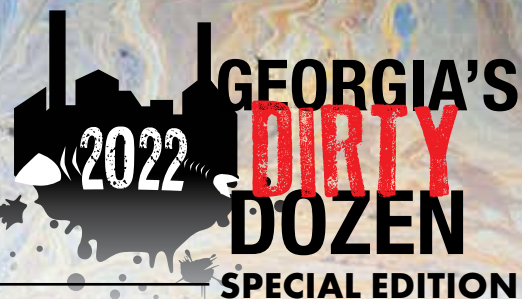
In 2006 when Ogeechee-Canoochee Riverkeeper stepped into a battle over saving old growth cypress trees on a 100-acre Bulloch County reservoir by suing the U.S. Army Corps of Engineers under the Clean Water Act, the grassroots citizen organization helped clarify what silviculture projects are exempt under the federal law and saved the cypress of Cypress Lake.

## FOR MORE INFORMATION

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



## **UNITED STATES V. WRIGHT BROTHERS CONSTRUCTION & GDOT**

### GDOT, Georgia's Largest Dirt Mover, Gets \$1.5 Million Wake Up Call on Dirt Pollution

#### **INTRODUCTION**

Believe it or not, dirt is the leading cause of water pollution in Georgia. When rains wash over construction sites and other land where vegetation has been removed, stormwater rushes downhill, carrying with it mud, sediment and sand that can literally choke the life out of streams and rivers. And, when it comes to moving dirt in Georgia, nobody does more of it than the state's own Department of Transportation (GDOT). Yet, inexplicably, the state road-building agency was exempted from the state's original Erosion and Sedimentation Act adopted in 1975. In the quarter century after passage of this landmark legislation, GDOT was essentially self-regulating. All that changed in 2000 when Georgia began enforcing portions of the federal Clean Water Act specifically addressing "dirt pollution" from construction sites. After a resident on northeast Georgia's Lake Burton complained to Georgia's Environmental Protection Division (EPD) about sediment from a highway project fouling the normally clear mountain reservoir, EPD was faced with taking action against a fellow state agency. Ultimately, federal regulators initiated legal action. The \$2.8 million settlement that resulted got GDOT's attention. The message was as clear as the seven-figure settlement: the state agency was now accountable for keeping dirt from their road projects out of Georgia's streams.

#### **THE WATER BODY**

In this egregious example of dirt pollution, a GDOT contractor piped two trout streams—Jones Branch and Acorn Creek in Rabun County—and then buried the streams under dozens of feet of fill dirt. When rains came, the dirt flowed downhill into nearby Lake Burton, a manmade reservoir dating to 1920s when the Georgia Power Company dammed the Tallulah River in four locations to create a series of reservoirs (Burton, Seed, Rabun and Tallulah) and associated hydroelectric plants. Though less than 50 miles long, the Tallulah is renowned for its scenic beauty. In the late 1800s prior to construction of the dams, Tallulah Gorge, with its series of precipitous waterfalls, was a tourist hotspot known as the "Niagara



Sediment pollution from DOT projects in Rabun County fouled Lake Burton impacting water quality and recreation on Tallulah River reservoirs including lakes Seed, Rabun and Tallulah as well as downstream on the Tugaloo River, a mountain headwater stream of the Savannah River.



The Georgia Department of Transportation is considered the largest single mover of dirt in the state. So in the early 2000s as Georgia's Environmental Protection Division began enforcing portions of the Clean Water Act regulating stormwater from construction sites, it was no surprise that road building projects consistently generated the most citizen complaints.

"We decided the best bang for the buck was to get DOT into compliance," said Bert Langley, a former director of compliance with EPD, now retired. "And, that was a big task because no one had ever asked DOT to follow the laws."

The thinking, Langley said, was that if EPD could get GDOT in compliance, others would follow.

When EPD received complaints from a Lake Burton resident about road work on U.S. 411 and U.S. 76 in Rabun County, a site inspection revealed that between 2004 and 2007 the GDOT contractor, Wright Brothers Construction, had buried portions of seven primary trout streams beneath mounds of dirt, a violation of both the Clean Water Act's construction stormwater and wetlands protection rules.

The U.S. Environmental Protection Agency and U.S. Department of Justice soon filed suit against the contractor and GDOT, and in 2011 a settlement was reached that forced the contractor and GDOT to pay a \$1.5 million civil penalty to the federal government and spend \$1.35 million to restore trout streams in the area. At the time of the settlement, the civil penalty was one of the largest ever under Clean Water Act provisions prohibiting the unauthorized filling of wetlands and streams.

At GDOT, the settlement turned heads and changed the culture. Langley said. "It was a major shake up for them. Today, they know what they are supposed to do, and they do a fair job, but back then (prior to implementation of construction stormwater permitting) it was a circus."

of the South." Today, valuable lakefront homes crowd the banks of the four reservoirs and Tallulah Gorge State Park preserves the two-mile long, 1,000-foot deep gorge. Twice each year, Georgia Power Company sponsors a series of water releases that permits thrill seeking kayakers the opportunity to run the Class IV-V whitewater through Tallulah Gorge.

## THE CASE

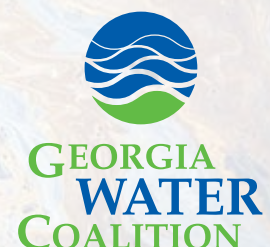
In 2000 when Georgia began implementing the Clean Water Act's construction stormwater provisions designed to force developers and others to keep dirt on their construction sites and out of nearby streams (and off private property), EPD, with limited funds and manpower, was intentional about targeting the state's biggest dirt mover—GDOT. After all, the state agency's road building projects consistently generated the most citizen complaints.



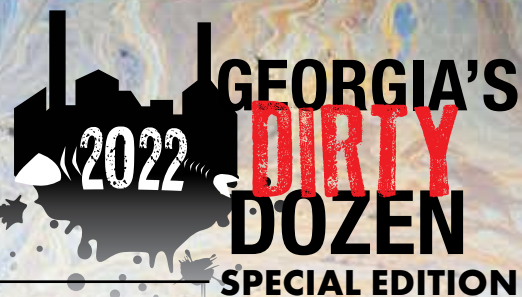
A swimmer flips into the Tugaloo River. A headwater stream of the Savannah River, the Tugaloo's health is dependent upon the protection of the Tallulah and Chattooga rivers upstream.

## FOR MORE INFORMATION

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



## **UNITED STATES V. DEKALB COUNTY**

### EPA Forces Sewage Upgrades In DeKalb County, But Progress Has Been Slow

#### **INTRODUCTION**

In 2007, after years of unceasing sewage spills, the U.S. Environmental Protection Agency (EPA) deemed DeKalb County's wastewater system a failure, and took legal action to force the county to fix its aging sewer collection system and treatment facilities. The result was a 2011 consent decree that required the county to pay a \$453,000 fine to federal and state governments, improve some 20 percent of its sewer lines in so-called "priority areas," and achieve specific pollution reduction goals by 2020. But improvements were slow in coming. The 2020 deadline came and went, resulting in an amended consent decree in which DeKalb County paid another \$1 million in fines and promised, among other things, to fix by the end of 2027 more than 100 sites where multiple sewage spills had already occurred. While the county has made progress since 2020, the scope of the work, estimated to cost \$1 billion, is daunting. And critics contend that the mandated fixes are not enough to fully eliminate sewage spills and that ongoing spills disproportionately impact DeKalb's lower income and predominantly Black communities. In 2021, the South River Watershed Alliance sued DeKalb County arguing that the amended 2020 consent decree failed to enforce the Clean Water Act.

#### **THE WATER BODY**

DeKalb County is drained by dozens of small streams like Nancy and Peachtree that flow to the Chattahoochee River and Intrinishment, Sugar, Shoal and Snapfinger that wind to the South River. Each of these streams has been identified by state regulators as having high fecal bacteria levels, largely due to the frequent sewage spills that plague DeKalb County's sewage collection system. Likewise, sections of the South and Chattahoochee rivers on the receiving end of these creeks also fail to meet water quality standards. In spite of this, the Chattahoochee River through Atlanta serves as the region's primary drinking water source and one of the region's top outdoor recreation amenities with more than 3 million people visiting the Chattahoochee River National Recreation Area annually for fishing, boating, swimming and walking the park's trails. The South River, long-neglected and polluted, is nevertheless undergoing a renaissance with the development of recreational walking trails along its banks and a boating trail stretching from DeKalb County to Jackson Lake.



The South River in South DeKalb County spills over Albert Shoals. Though progress has been made and water quality in the South River has improved over the last four decades, much still needs to be done to fix the county's 2,700-mile sewer system and its treatment facilities. The South River Watershed Alliance has sued DeKalb County arguing that the county's consent decree violates the Clean Water Act because it does not mandate repairs and set deadlines for fixing the entire system, especially in South DeKalb County where most of the sewage spills occur.

## THE CASE

The scope of DeKalb County's sewer infrastructure upgrade needs is immense. The county operates nearly 2,700 miles of sewer lines and two major wastewater treatment plants that process on average 78 million gallons of sewage daily. The system is so large—in terms of miles of sewer pipe—that there's one manhole cover for every 10 of the county's 700,000-plus residents. It's larger than the much-maligned City of Atlanta sewer system by nearly 600 miles.

Years of neglect have taken their toll. Even after the 2011 consent decree, mismanagement and corruption stalled upgrades. Construction of the new Snapfinger wastewater treatment facility, which when complete will expand the system's capacity by nearly 20 million gallons a day, was begun in 2012 and is still not finished. Between 2014 and 2019, the system experienced 800 spills. In a 16-month span between 2019 and 2021, 27 million gallons of untreated sewage escaped from the system. In the first eight months of this year, nearly 12 million gallons escaped the system.

During rain events, the system's aging pipes allow water to infiltrate the sanitary sewer system, and when the pipes fill, the mix of raw sewage and rainwater overflows through manhole covers, fouling neighborhoods and area streams.

Indeed, the task of rehabbing this system will take years—much longer than the five years remaining in the current consent decree. That agreement mandates that only 831 miles of the system's nearly 2,700 get fixed, and initially targets 103 sites where repeated sewage overflows have been identified.

The good news is that since 2020 half of those 103 sites have been repaired, along with 42 other sites not previously identified in the consent decree, and the county is slowly assessing, rehabbing and replacing aging pipes.

The bad news is that much of the upgrades outlined in both the 2011 and 2020 consent decrees disproportionately benefit higher income and predominantly white portions of DeKalb County and neglect predominantly Black sections of the county, according to Jacqueline Echols, board president with the South River Watershed Alliance.

The Alliance has filed a Clean Water Act lawsuit of its own against DeKalb County arguing that the consent decree violates the Clean Water Act because it does not mandate repairs and set deadlines for fixing the entire system—especially in South DeKalb County where it claims most of the sewage spills occur.

"The people of South DeKalb County deserve equal protection under the Clean Water Act, and they are not getting it," Echols said. In a June letter to EPA Region 4 administrator Daniel Blackman, Echols noted that 66 percent of the spills in DeKalb's sewer system occurred in South DeKalb County, but that the sewer lines targeted for repair are mostly in North DeKalb County.

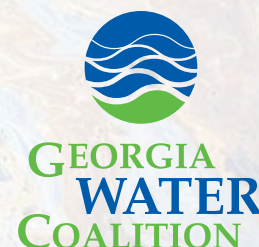
The final verdict in South River Watershed Alliance v. DeKalb County is still pending, as is a full and complete rehab of DeKalb's long ailing sewer system. But this ponderous journey to healthy creeks in DeKalb may have never started if not for the Clean Water Act.



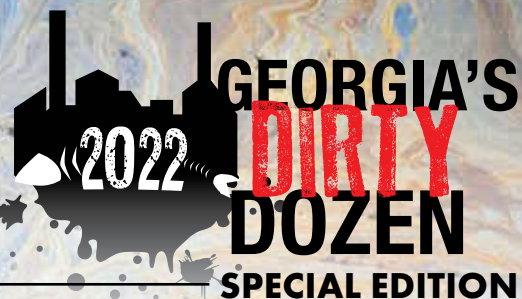
Treated sewage is discharged to the South River from DeKalb County's Pole Bridge Creek wastewater treatment facility. The U.S. Environmental Protection Agency took action against DeKalb County in 2007 after years of unceasing sewage spills. The county is now in the midst of sewer infrastructure projects estimated to cost \$1 billion and has until 2027 to come into compliance.

## FOR MORE INFORMATION

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



## **Ogeechee-Canoochee Riverkeeper v. King America Finishing**

### Historic Fish Kill Leads To Millions of Dollars in Investments to Protect Ogeechee River

#### **INTRODUCTION**

It has been more than a decade since some 38,000 fish went belly up in the Ogeechee River downstream from the King America Finishing (KAF) textile plant in Screven County, but for many residents along the Ogeechee the horror of that incident still haunts. After discovering the dead fish along the banks of the river by her home, Connie Shreve posted "Poisoned River" posters at the nearby public boat ramp warning off would-be anglers and boaters. In the months that followed, those that recreated on the river began going elsewhere, and many have still not returned. "My business went from 90 to nothing. The whole world changed on the river," said Shreve, noting that her canoe/kayak rental business has declined by about 80 percent over pre-fish kill highs. While the impact of negative publicity over the fish kill lingers in Ogeechee River communities, the Clean Water Act provided local advocates with the power to hold both the textile plant and Georgia's Environmental Protection Division (EPD) accountable. Advocacy efforts and legal action taken by Ogeechee Riverkeeper led to nearly \$6 million in investments to protect the river, most of which would not have been made had the enforcement of clean water laws been left solely to state regulators.

#### **THE WATER BODY**

The 245-mile long Ogeechee River is one of Georgia's last remaining free-flowing rivers. A blackwater beauty, it flows through Eastern Georgia, draining a 5,540 square-mile basin that encompasses wetlands, forests, farms, and scores of towns and cities. Within that basin, thousands of Georgians rely on the river and its tributaries for fish to feed their families, and the underlying aquifer for their drinking water. The Ogeechee also supports diverse wildlife, offers countless recreational opportunities, supplies water for agricultural and industrial uses, and carries off wastewater. Notably, it is home to several protected species, including the endangered Atlantic and shortnose sturgeons which spawn in its tea-colored water during the winter and early spring.



The impacts of the 2011 fish kill still haunt Ogeechee River communities. Those that recreated on the river went elsewhere to fish and boat, and even a decade later, some have not returned. Connie Shreve, a local canoe/kayak outfitter, said her business has declined about 80 percent over pre-fish kill highs.

## THE CASE

Though EPD identified the cause of the 2011 Ogeechee River fish kill as a likely bacterial infection, during the agency's investigation they discovered that KAF had for five years been illegally discharging toxic chemicals into the river after starting a new flame-retardant textile production line in 2006. No dead fish were found upstream of the plant.

When EPD issued a weak penalty of \$1 million (in this case, EPD could have legally fined the company \$90 million) and allowed the company to continue operating its flame retardant products line, Ogeechee-Canoochee Riverkeeper took legal action under the citizen suit provision of the Clean Water Act.

The suit was settled in a 2014 consent decree after KAF agreed to pay \$300,000 on top of the initial \$1 million fine to fund environmental and river restoration projects on the Ogeechee. The company also agreed to make a \$2.5 million contribution to the riverkeeper, spent an estimated \$3 million upgrading the textile plant's wastewater system and was subject to a state pollution control permit that made the company's discharge what EPD called "the most highly regulated in the state."

In subsequent years, however, KAF, which was purchased by Milliken & Company in 2014, and Ogeechee Riverkeeper continued to clash.

Milliken habitually violated its state permit regulating how much and what kind of pollutants it could discharge to the river. Over a period of seven years preceding 2020, the company violated its permit 35 times, resulting in fines totaling \$350,000.

The presence of per- and polyfluoroalkyl substances, known as PFAS, which are used in producing flame retardant textiles, further frustrated matters. Ogeechee Riverkeeper conducted tests of the company's effluent and fish in the river, finding evidence of PFAS in both. Called "forever chemicals" because they persist in the environment for years, they are linked to multiple negative health impacts in humans.



Ogeechee Riverkeeper's Clean Water Act citizen lawsuit against King America Finishing, a Screven County textile plant, was prompted by a 2011 fish kill in which some 38,000 fish died in the Ogeechee River downstream from the plant. The legal action ultimately resulted in \$6 million in investments to protect the river, most of which would not have been made without the riverkeeper's advocacy.



River and fish tissue testing conducted by Ogeechee Riverkeeper revealed that King America Finishing was discharging PFAS into the river. Linked to negative health impacts in humans, the manmade "forever chemicals" were used in production of fire retardant fabric at the plant. Earlier this year, Milliken, which purchased the King America Finishing facility, announced that it would eliminate PFAS from its products and close its Screven County facility.

Despite this evidence, EPD never forced the company to test the river's fish for PFAS as required in the 2014 consent decree.

Finally, in 2020, at Milliken's request and over Ogeechee Riverkeeper's objections, EPD weakened some provisions of the company's pollution control permit.

Though frustrated by EPD's acquiescence to industry, Ogeechee Riverkeeper's years of advocacy, emboldened by the power of the Clean Water Act, have not been in vain.

In February, Milliken committed to eliminating all PFAS-containing materials from its products by the end of this year, and in July the company announced it would shutter its Screven County plant by early 2023, putting an end to the only major point source of pollution on the 245-mile mainstem of the Ogeechee.

Meanwhile, the grassroots organization that was originally formed because of a Clean Water Act lawsuit on the Canoochee (see page 14 of this report) continues its work to protect the 5,540 square-mile watershed and restore the faith of Ogeechee River communities in their beloved river. "We're here for the long haul," said Damon Mullis, Ogeechee Riverkeeper.

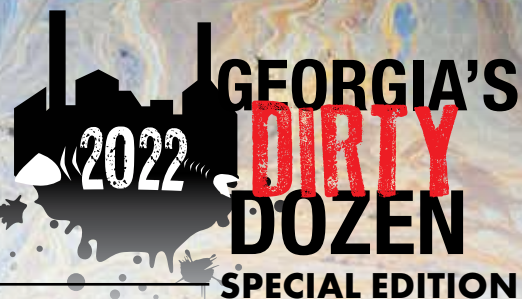


GEORGIA  
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# Celebrating the Clean Water Act's Impact on **GEORGIA'S WATER**



## **CHATTAHOOCHEE RIVERKEEPER V. AMERICAN SEALCOAT MANUFACTURING**

Citizen Complaint Identifies Pollution, Prompts Regulators to Strengthen Industrial Stormwater Programs

### **INTRODUCTION**

The video, shot by Chattahoochee Riverkeeper Jason Ulseth in May 2014, and spread far and wide on social media, stirred outrage among Chattahoochee River lovers. It showed a black oily discharge spilling from a pipe and flowing downhill toward the river—less than 1,000 feet away. That investigation ultimately led the Riverkeeper to file a lawsuit against American Sealcoat, a manufacturer of products used for sealing cracks in asphalt, for discharging pollutants without a permit. The verdict in the case—which included a splashy \$10 million fine—was a testament to provisions within the Clean Water Act that allow citizens, and citizen-based organizations, to take legal action to remedy water pollution problems. The litigation was initiated by a citizen seeing a problem and calling Chattahoochee Riverkeeper. What transpired after that call not only eliminated an ongoing pollution problem, but prompted both state and federal regulators to step up their efforts to stop stormwater pollution from industrial sites.

### **THE WATER BODY**

Coursing 435 miles from the Blue Ridge Mountains to the Florida state line in southwest Georgia, the Chattahoochee River is Georgia's longest and most important river. It provides drinking water for more than five million people and carries away the treated wastewater of those same users. The river fills eleven reservoirs of varying size that provide water for drinking, energy generation, irrigation, and recreation. In the Atlanta area, the Chattahoochee River National Recreation Area hosts more than three million visitors annually who float the river's gentle rapids, cast for trout in its cold water and jog, walk and bike on riverside trails. Recently, a coalition of local governments and non-profit organizations has begun investing in plans to develop a linear public park with recreational trails and river access stretching from Atlanta downstream to Coweta County—through the very stretch of property impacted by the American Sealcoat pollution.



Action to stop pollution from the American Sealcoat site in Fulton County helped protect the Chattahoochee River downstream from Atlanta where a coalition of non-profit organizations and local governments are working on plans to develop a linear park, including a boating, or water, trail on the river, from Atlanta to Coweta County.

## THE CASE

The discovery of this pollution and the initial \$10 million verdict in the Riverkeeper v. American Sealcoat case was a high-dollar vindication of the power of the Clean Water Act's citizen lawsuit provision, and it illustrated that provision's importance in the face of an anemic response from state and federal environmental regulators.

On the day Chattahoochee Riverkeeper filed its lawsuit, Georgia's Environmental Protection Division (EPD) performed an emergency inspection at the site. EPD would fine American Sealcoat \$2000 and ask the company to develop a plan for fixing their pollution problem. Neither the fine nor the plan was ever forthcoming as the company closed its doors and disappeared, not even bothering to defend itself in federal court.

The company's disappearing act also means it's unlikely the federal government will ever collect on any of the \$10 million fine issued by the district court.

Ultimately because of Riverkeeper's legal action, American Sealcoat's landlord, M&K Warehouses, settled a concurrent lawsuit with the organization, agreeing to spend some \$500,000 to cleanup pollution on the site and designating another \$90,000 to fund environmental projects aimed at protecting the Chattahoochee.

Those funds were used by the Georgia Department of Natural Resources to improve a boat ramp on the river and install security cameras at the location to prevent illegal dumping, a project that has resulted in several prosecutions and reduced litter at the secluded site.

But, the impacts of the case went beyond these on-the-ground improvements.

After the lawsuit, the U.S. Environmental Protection Agency (EPA) strengthened its own industrial stormwater enforcement program, and over the last several years, EPD has expanded its industrial stormwater inspection staff and this year enacted more stringent monitoring requirements for the more than 2,500 permitted industrial facilities across the state. These facilities are required to have stormwater management plans in place to prevent the kind of egregious pollution that occurred at the American Sealcoat site.

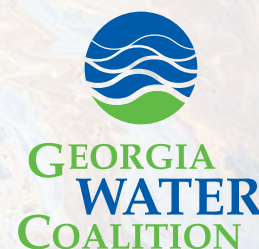
"In 1952, you might have expected to see pollution like this, but in 2012, that was something you didn't see every day," said Ulseth. "This case got the attention of the public and the regulators. It exemplified the dangers of industrial stormwater pollution and the need for the regulators to take a more proactive approach."



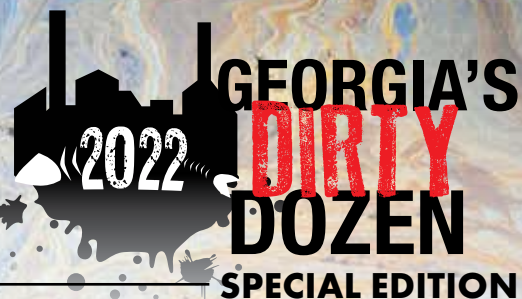
**Before and after:** In 2014, responding to a citizen complaint, Chattahoochee Riverkeeper discovered an asphalt sealant company illegally discharging its product to a drainage way that spilled into the Chattahoochee River in Fulton County. The lawsuit that followed forced the property owners to remove the pollution and restore the site. It also prompted federal and state agencies to pay closer attention to stormwater discharges from industrial facilities.

## FOR MORE INFORMATION

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



## **UPSTATE FOREVER AND SAVANNAH RIVERKEEPER V. KINDER MORGAN**

Citizen Suit Establishes Link Between Groundwater Pollution and Surface Water, Creates \$1.5 Million Fund for Clean Water Projects

### **INTRODUCTION**

In December 2014, a Kinder Morgan petroleum pipeline near Belton, South Carolina developed a leak that for several days went undetected and released 369,000 gallons of gasoline into the surrounding land, contaminating wetlands and nearby creeks that flowed to the Savannah River. While Kinder Morgan initiated a cleanup that removed some 200,000 gallons of gasoline from the spill site, an estimated 160,500 gallons remained, contaminating the soil to a depth of 14 feet. Two years after the spill, gasoline could still be seen on the creeks, and tests conducted by conservation groups showed more widespread contamination and higher concentrations of hazardous chemicals than were shown in Kinder Morgan's reports. That's when Upstate Forever and Savannah Riverkeeper filed suit under the Clean Water Act to force a more thorough cleanup. The suit, and the legal appeals that followed, stretched into 2020 and all the way to the U.S. Supreme Court. In the end, the case helped establish that those who pollute groundwater that then spreads to surface water are responsible for that pollution. Meanwhile, the settlement between Kinder Morgan and the plaintiffs established a \$1.5 million fund for clean water projects in the Upper Savannah River basin.

### **THE WATER BODY**

Flowing more than 300 miles along the Georgia-South Carolina state line, the Savannah River is Georgia's second largest river basin. At the Georgia coast, it supports the fourth largest port in the United States. Up river, it is no less important, supplying drinking water for 1.4 million people, including its namesake city as well as Augusta, among other municipalities. The streams of South Carolina and Georgia's upstate—like Browns and Cupboard that were impacted by the Kinder Morgan spill—feed three federal reservoirs above Augusta which provide recreational opportunities and hydropower for the region. Together Clarks Hill, Russell and Hartwell reservoirs attract 17.5 million visitors annually. Meanwhile, beneath the river's surface is a treasure trove of biological diversity, including the federally protected Atlantic and shortnose sturgeons that spawn in the Savannah.



The upstate streams impacted by the Kinder Morgan pipeline spill in Anderson County, South Carolina feed the Savannah River and its three U.S. Army Corps of Engineers reservoirs (Hartwell, Russell and Clarks Hill) that attract 17.5 million visitors annually.

## THE CASE

The United States is crisscrossed by crude oil, petroleum products and natural gas pipelines. In total, there are more than 200,000 miles of pipelines in the country, more than four times the total miles in the country's interstate highway system. Mostly buried underground and often traversing remote swaths of land, when these pipes leak, they can go undetected.



An oily sheen covers wetlands near the Kinder Morgan pipeline spill. The spill released 369,000 gallons of gasoline and left contaminated soil up to a depth of 14 feet. The pollution prompted Savannah Riverkeeper and Upstate Forever to sue Kinder Morgan under the Clean Water Act. Kinder Morgan agreed to a more complete cleanup of the site and agreed to pay \$1.5 million for a fund to support clean water projects in the impacted area.

Having already spent \$17 million on the cleanup, in October 2020, Kinder Morgan agreed to a settlement in which the company would continue groundwater remediation at the site and pay \$1.5 million to set up a fund for citizen science and water quality projects in the Upper Savannah River basin. Managed by a local volunteer water council, this fall, the council began providing grants for clean water projects. The Council expects to distribute more than \$150,000 in grants each year for at least the next 20 years.

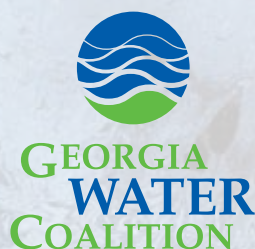
Such was the case in 2014 near Belton, South Carolina. Nearby residents notified authorities when they began smelling petroleum and noticed plants dying. The spill contaminated a layer of soil 14 feet thick. The cleanup that Kinder Morgan initiated proved inadequate to stem the pollution which leached into groundwater and then into nearby creeks. By 2016, tests showed that contamination in Browns Creek was increasing, despite there being no direct surface water connection between the spill site and the creek.

Initially, the courts determined that Kinder Morgan's leak was not a violation of the Clean Water Act because the pollution was not being discharged from a pipe into the creeks. Upstate Forever and Savannah Riverkeeper appealed that decision, and subsequent appeals by Kinder Morgan brought the case all the way to the Supreme Court which, at the time, was looking at several similar cases in which contaminated groundwater was polluting surface water.

In April 2020, the Supreme Court ruled in *Maui v. Hawaii Wildlife Fund* that a discharge that pollutes groundwater that in turn pollutes surface water should be regulated under the Clean Water Act. Wrote the Court: the Clean Water Act "requires a permit if the addition of pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters." The high court then sent the Kinder Morgan case back to the lower courts.



An aerial view of one of the creeks impacted by the Kinder Morgan gasoline spill shows an oily sheen. Tests showed that contaminated groundwater continued to leach into the creeks well after the spill. In 2020, the Supreme Court ruled that in cases where a discharge pollutes groundwater that in turn pollutes surface water, that discharge should be regulated under the Clean Water Act.



## FOR MORE INFORMATION

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# UNFINISHED BUSINESS

## Clean Water Act's work is not done yet

While this special edition of the Dirty Dozen celebrates the Clean Water Act's success in Georgia over the past 50 years, critical work remains to clean up and protect our waterways. Throughout the state, pollution from municipal, industrial, and agricultural activities poses an ongoing threat to our rivers, lakes, and wetlands. Water pollution continues to have adverse, disproportionate effects on communities of color and low-wealth communities. The Clean Water Act can and must be used to address these current and future pollution problems.



The Okefenokee Swamp, one of Georgia's seven natural wonders, is threatened by a proposed heavy mineral sands mine a stone's throw from the border of the Okefenokee National Wildlife Refuge in Charlton County.

This year's report concludes by highlighting some of the work that remains to be done, with the hope that—with continued enforcement of the Clean Water Act—every year it will get harder and harder to name a Dirty Dozen.

### PROTECTING THE OKEFENOKEE SWAMP

Twin Pines Minerals, an Alabama-based mining company, is proposing a heavy mineral sands mine a stone's throw from Okefenokee Swamp, a treasured National Wildlife Refuge and Wilderness Area. The mine would damage important wetlands and could threaten the swamp's hydrology and water quality. Georgia's Environmental Protection Division (EPD) must deny permits for this risky project, and state legislators should act to permanently protect the Okefenokee.

### STOPPING UNPERMITTED DISCHARGES FROM LAND APPLICATION SYSTEMS

Land application systems (LASs) are supposed to function as wastewater treatment systems, where partially treated wastewater is used to irrigate crops. These systems are meant to be "no discharge" systems, where nutrients and other pollutants remain on site. But LASs do not function as intended. Wastewater runs off fields and pollutes nearby streams, and excess pollutants, including forever chemicals like PFAS, migrate into groundwater. EPD must do more to prevent unpermitted discharges from LASs and to hold polluters accountable.



Across the state, there are more than 200 facilities that treat municipal or industrial waste through land application systems. The facilities, which spray partially treated wastewater on to land, are meant to be "no discharge" systems, but they do not always function as intended. Pollution can wash off spray fields into nearby streams and migrate to groundwater.



Georgia Power intends to leave tons of toxic coal ash in unlined pits at its power plants along the Chattahoochee and Ocmulgee rivers. Monitoring reports show coal ash pollutants in groundwater surrounding these pits.

### ADDRESSING LEGACY POLLUTION FROM COAL ASH

Georgia Power intends to leave tons of toxic coal ash in unlined pits at power plants next to the Chattahoochee and Ocmulgee rivers. The company's own monitoring reports show significant levels of coal ash pollutants in groundwater surrounding the unlined pits, and it's only a matter of time before those contaminants migrate to surface waters. Instead of issuing permits that would allow coal ash to pollute groundwater indefinitely, the EPD must require Georgia Power to excavate its ash and store it in dry, lined facilities away from water.

### CALL TO ACTION

The Dirty Dozen report traditionally is a call to action for Georgia's leaders and its citizens to solve ongoing pollution problems, eliminate threats to our waterways, and correct state and federal policies and actions that lead to polluted water. Our call to action this year is clear: Georgia's leaders and citizens must build on the Clean Water Act's success to ensure that our waterways are swimmable, drinkable, and fishable for all Georgians, now and in the future.

