

Georgia Department of Natural Resources

2 Martin Luther King, Jr. Drive, S.E., Suite 1152 East Tower, Atlanta, Georgia 30334-9000

Lonice C. Barrett, Commissioner

Carol A. Couch, Ph.D., Director

Environmental Protection Division

404/656-4713

June 14, 2004

MEMORANDUM

Erosion and Sedimentation Control Local Issuing Authorities
Other Interested Parties

FROM: Carol A. Couch, Ph.D., Director
Environmental Protection Division



Georgia Erosion and Sedimentation Act
State Waters Issues

This memo is to clarify certain issues concerning state waters, including the identification of state waters that require stream buffers and the installation of storm water detention ponds in state waters. Please be advised that it is the responsibility of local Issuing Authorities to make these determinations.

State Waters that Require Stream Buffers

The term "state waters" is defined in Section 12-7-3(16) of the Georgia Erosion and Sedimentation Act (Act) as "Any and all rivers streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation."

Section 12-7-6(b)(15) of the Act states that "Except as provided in paragraph (16) of this subsection, there is established a 25-foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to Code section 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented..." The term "wrested" is defined in Webster's Dictionary as "to pull, force, or move by violent wringing or twisting movements." Similar language is provided in Section 12-7-6(b)(16) for 50-foot trout stream buffers, with the exception that drainage structures are not excluded.

The determination of whether a buffer is required for state water is based solely on whether there is sufficient water flow to “wrest” the vegetation from the banks of the stream, thereby forming a defined channel. The defined channel may have occurred over a long period of time or by soil erosion; however, as observed presently it is a defined channel and is protected by the 25-foot buffer requirement.

The following factors **are not** to be considered in state waters determinations for stream buffer protection:

- Whether a stream appears on a topographical map as a solid or dashed blue line (the presence of a blue line is an indication of state waters, but not all streams are mapped as blue lines);**
 - **Whether the stream originates on the property;**
 - **Whether a stream that originates on the property flows into another stream before it leaves the property;**
- The amount of water in the stream at any given time, i.e., under normal conditions;**
- The duration of water flow in the stream;**
- The watershed area, unless a scientific correlation between wrested vegetation and watershed area has been made by the Issuing Authority; or**
- The absence of observable aquatic life.**

Analyzing the topography on an erosion and sedimentation control plan is the first step in determining whether a site contains a state water that requires a buffer variance. Further information can be obtained from a soils or topographical map of the area. An onsite inspection is essential in making the final determination if a review of the topography and soils on the site indicate a possible drainage feature. The final determination should then be made using the criteria in the preceding paragraphs.

Storm Water Detention Ponds in State Waters

The term “drainage structure” is defined in Section 12-7-3(7) of the Act as a “device composed of a virtually nonerodible material such as concrete, steel, plastic, or such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.” This definition only allows the components of a stormwater management pond that meet this definition as drainage structures to be exempt from stream buffer variance requirements. Other components, including excavated ponds, earthen dams, etc., require a buffer variance that may be applied for under 391-3-7.05(2)(C) in DNR’s Erosion and Sedimentation Rules. This states, “The project involves the construction or repair of a structure which, by its nature, must be located within the buffer. Such structures include dams, public water supply intake structures, wastewater discharges, docks, boat launches,

and stabilization of areas of public access to water.” Please note that drainage structures are only exempt on warm water streams and are not exempt on trout streams.

Section 12-7-6(b)(14) of the Act states that “Land-disturbing activity plans for erosion and sedimentation control shall include provisions for control or treatment of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in subsection a”. These levels are 25 NTU for warm water streams and 10 NTU for trout streams. The use of in-stream ponds to intentionally trap sediment during land disturbing activity is in violation of this section of the Act and is not allowed.

EPD appreciates the local Issuing Authorities’ efforts in implementation of their local erosion and sedimentation ordinances. We hope the above guidance helps in those efforts. If you should have any questions about this memo, please contact Ms. Jan Sammons in the Water Protection Branch, NonPoint Source Program, at (404) 675-6240.

CAC:jss