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BUFFERS REQUIRED FOR WETLANDS in GEORGIA

On July 10th the Georgia Court of Appeals by a 4-3 margin decided to overturn two previous court decisions and require buffers on wetlands. While this decision is appealed to the Georgia Supreme Court, it's business as usual, see attached document.

Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Drive, Suite 1456, Atlanta, Georgia 30334
Judson H. Turner, Director
(404) 656-4713

August 12, 2014

MEMORANDUM

TO: Erosion and Sedimentation Local Issuing Authorities
Other Interested Parties

FROM: Judson H. Turner, Director
Environmental Protection Division

SUBJECT: Evaluation of Stream Buffer Variances during the Pendency of the Tired Creek Appeal

On July 16, 2014 the Georgia Court of Appeals by a 4-3 margin reversed two separate decisions by superior courts concerning a stream buffer variance issued by EPD for a project in the Tired Creek watershed in Grady County. Contrary to EPD's application of the Erosion and Sedimentation Act's buffer provision, which the superior courts had affirmed, the Court of Appeals held that 25-foot buffers apply to all state waters, not just those "...where vegetation has been wrested by normal stream flow or wave action..." (OCGA 12-7-6(b)(15)(A)). The ruling in its entirety is available at the Court of Appeals of Georgia website at http://www.gaappeals.us/docket/results_one_record.php?docr_case_num=A14A0215.

This ruling has created confusion and uncertainty as to its applicability to land disturbing activities within buffers. Areas in questions may include, but are not limited to: freshwater wetlands, coastal wetlands and marshes, beaches, grassed swales, drainage channels without wrested vegetation, sea walls, vegetated ponds without wrested vegetation, and other waters without clear banks and wrested vegetation.

The state has asked the Georgia Supreme Court to review the Court of Appeals' ruling. During the pendency of this appeal, an applicant for a stream buffer variance that contains state waters that would be brought into question by the ruling may apply for a variance under the buffer rules that existed immediately prior to the ruling and will be evaluated as such by the EPD. These rules are available on the EPD website at: <http://epd.georgia.gov/erosion-and-sedimentation>. EPD will continue to make buffered state water determinations under existing protocols and recommends that the Local Issuing Authorities do the same. The applicant should be aware that third parties may very likely try to challenge any buffer variance determination or plan of mitigation made pursuant to this action.

For projects where the applicant delineates and the issuing authority agrees that there is a bank and wrested vegetation, such as a lake or stream, a 25-foot buffer (50-foot for trout streams) remains except as limited by the statutory exceptions and the project can continue under the buffer rules that existed immediately prior to the ruling (referenced above) and will be evaluated as such by the EPD.

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Georgia residents, many of which have a job related to construction, believe the existing buffer requirements for protecting streams, creeks and rivers are a good thing! Most people are familiar with and support Georgia's proactive regulation that requires a preserved area of undisturbed land (Buffer) to be placed along most state waters. For years, written "guidance" from Georgia Environmental Protection Division (GA EPD) has directed buffers to be measured from the confining cut of a stream channel when "wrested vegetation" is determined present by a certified Local Issuing Authority (LIA) or GAEPD inspector. For salt water marshes, a recent decision this year by GAEPD Director, Judd Turner overturned the requirement for buffers measured from a "marsh jurisdictional line" as determined by Georgia Department of Natural Resources, Coastal Resources Division and

FIELD MANUAL FOR EROSION AND SEDIMENT CONTROL IN GEORGIA

VEGETATIVE AND STRUCTURAL
BEST MANAGEMENT PRACTICES (BMP'S)
FOR
LAND-DISTURBING ACTIVITIES

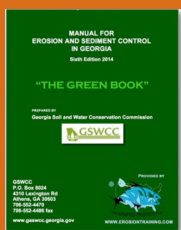


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changed the measurement requirement to that of wretched vegetation. Although wetlands are defined by state law as a "state water", they've not been included in the category of state waters that require a buffer since surface water doesn't move fast enough to create wretched vegetation.



Today, big fines and/or stop work orders are waiting for those who get caught impacting a buffer along qualified state waters without first obtaining permission or "variance" from the GAEPD.

Many in the construction industry believe the ever growing list of water protection laws constrain land development unnecessarily and over reach their actual value in protecting our water resources. Similarly, many land developers believe this new attempt by



environmental groups to protect swampy areas with a buffer is just another unnecessary law that takes a bite out of the bottom line! As our population growth generates the need to disturb land and build in formerly undeveloped areas, is it necessary that we increase the protection

of wetlands with a buffer when they're already protected by federal law? Nationally, part 404 of the Clean Water Act already requires protection or mitigation of wetlands, but not with a buffer.

A few questions to consider regarding this issue include:

- Nationally, the Clean Water Act already protects and/or mitigates wetland impacts from construction, but NOT with



a buffer. Why do environmentalists believe it's necessary to add buffer protection at the state level to existing federal regulations?

- What real data supports the need to protect wetlands with a buffer also?

- What are the environmental and economic benefits provided by preserving wetlands?

- Are wetlands with a buffer versus those without, in better condition?



- Since buffers for wetlands is a state law and not a federal requirement, will legislators vote next year to exempt wetlands from buffer protection?

- Will the new accountability for buffer protection around wetlands on the local level result in more enforcement, thereby increasing cost?

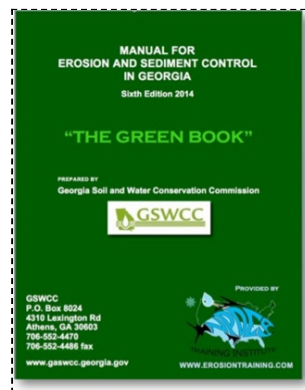
Personally, I'm grateful for the discussions and arguments we have as a nation with issues like this one; buffers around wetlands. As we work together, let's not forget the qualities that have made our nation great....a thriving economy with a strong construction sector that plays a major role in paying for our air, water, land and wildlife resources....only in America!

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American Association of State Highway and Transportation Officials

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EPA ENFORCEMENT Over WETLANDS DESTRUCTION

August 14, 2014, SAN FRANCISCO - The U.S. Environmental Protection Agency and the U.S. Department of Justice today announced a settlement with the owners of Anchordoguy ranch for violations of the Clean Water Act that destroyed more than 80 acres of rare vernal pool wetlands and streams in Tehama County, California. Ranch owners have agreed to pay \$795,000 for wetlands preservation and \$300,000 in penalties.

Between 2008 & 2010, the owners illegally deep-ripped 872 acres of the ranch to make room for more orchards, destroying 80 acres of vernal pool wetlands and damaging two acres of Coyote Creek. The ranch owners carried out these activities without a required Clean Water Act 404 permit from the U.S. Army Corps of Engineers.



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OCTOBER 22, 2014 TIME TO REGISTER for this GREAT EVENT!

The banner for the Griffin Annual S.T.R.E.A.M and BMP Demonstration Field Day - 2014 features several logos at the top: the NPOES Training Institute logo (a blue fish), the Griffin logo (green text with 'Growing TOGETHER' below it), and the Tetra Tech logo (a blue square with 'Tt' and 'TETRA TECH' to its right). Below the logos is a collage of four photographs showing various water management and construction techniques, including a large pipe installation, a trench, a stone-lined area, and a small structure. At the bottom of the banner, the text 'Griffin Annual S.T.R.E.A.M and BMP Demonstration Field Day - 2014' is displayed in green. Below the banner is a registration form with a green header bar containing 'Information', 'Register Now', and a green 'REGISTER NOW' button. The form includes a 'WHEN' section with the date 'Wednesday, October 22, 2014' and time '8:00 AM - 5:00 PM'. On the right side of the form, there are links for 'Summary', 'Invitation', and 'Location'. A small note at the bottom states: 'The City of Griffin in cooperation with the NPOES Training Institute is now accepting'.



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**OHIO LAWMAKERS MEET ABOUT LAKE ERIES
ALGAE BLOOMS!**

It's all About Responsible Stormwater Management!



OREGON, Ohio (AP) - State lawmakers from Ohio's Lake Erie region are gathering to talk about what can be done to improve water quality and combat the blooms of algae on the lake. The meeting was set to take place Friday morning just outside Toledo. **It comes nearly two weeks after more than 400,000 people in the Toledo area were told not to drink their tap water after it became contaminated.** Toxins from algae on Lake Erie have been linked to the water warning that lasted for more than two days.

Ohio officials on Thursday announced a series of first steps they're taking to address the tainted water. The state is making \$150 million in interest-free loans available so that cities can upgrade water treatment and wastewater plants.

COMPLIANCE TOOL BOX



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[GREEN BOOK Video Presentation](#)

[GREEN BOOK Update Presentation Free Download](#)

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[2013 NOI & NOT Forms](#)

[2013 FACT SHEET - NPDES General Permit for Construction \(GA\)](#)

[2013 FACT SHEET ADDENDUM - NPDES General Permit for Construction](#)

[2013 GAR100001 - NPDES GENERAL PERMIT - STAND ALONE](#)

[2013 GAR100002 - NPDES GENERAL PERMIT - INFRASTRUCTURE](#)



[2013 GAR100003 - NPDES GENERAL PERMIT - COMMON DEVELOPMENT](#)

[WHO NEEDS TO BE CERTIFIED in GEORGIA - FACT SHEET](#)

[March 5, 2012 Memo for Projects Less than 1-Acre](#)

[2012 303d LIST - GEORGIA](#)

[2007 EPD GUIDANCE TO SWCC DISTRICTS FOR PLAN REVIEWS](#)

[CITY OF ATLANTA - Forms, Checklists & CAD Sample Plans](#)

[2009 MODEL ORDINANCE \(Read Page 7, paragraph C\)](#)

[BUILDING & RENOVATING A POND in GEORGIA](#)

[CONCRETE WASHOUT PROCEDURES](#)

[STATE WATERS \(CCouch Ltr 2004\)](#)

[LOCAL ISSUING AUTHORITIES - NEW FEB 2012 List](#)

[ALTERNATIVE BMP GUIDANCE DOC](#)

[TMDL IMPLEMENTATION PLANS](#)

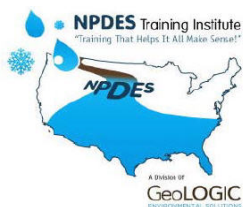
[STREAMBANK & SHORELINE RESTORATION in GEORGIA](#)

[GESA Exemption #8](#)

[BUFFER VARIANCE REQUIREMENTS FOR DAMS](#)



MORE STORMWATER CONFERENCES & TRAINING EVENTS



[S.T.R.E.A.M. - City of Griffin &](#)

[NPDES TRAINING INSTITUTE](#) have partnered to provide Georgia's most popular Annual Stormwater & Erosion/Sedimentation Field Seminar on OCTOBER 22nd!



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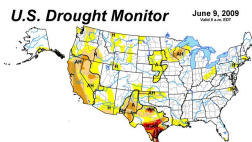
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**HERE's TO TIGHT LINES & GOOD TIMES
in Clean Abundant Water!!!**



Let's respect our neighbors downstream then getting in trouble and paying fines when pollution runoff of our properties next time it rains won't be an issue!

It's important that we sacrifice a little today to give our kids an equally great place to live, swim, fish, and hunt tomorrow! There is

a lot happening with water regulations that affect a diverse community of public and private entities. If you have areas of interest that you would like included in this newsletter, please contact us at 678-469-5120.

Sincerely,
NPDES 



T. Luke Owen, PG
President/Principal Trainer and Consultant

www.npdestraining.com
www.ms4training.com
www.erosiontraining.com
Luke@npdestraining.com

