

**Summary of Comments Received during the Public Comment Period  
August 24, 2015 – September 24, 2015  
Regarding Proposed Amendments to the Rules for Dam Safety, Chapter 391-3-8**

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On August 24, 2015, EPD issued a public notice requesting comments on proposed amendments to the Rules for Dam Safety, Chapter 391-3-8. A public hearing was held at 2:00 p.m. on September 9, 2015, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. The public comment period ended September 24, 2015.

We received 10 comments on the proposed rule amendments including comments from 1 environmental group, 2 home owners associations, 1 engineering consulting firm, and the 6 local governments. This document presents a summary of comments received and EPD's responses. Based on comments received during the public comment period, EPD will make two minor changes to improve the clarity of the proposed rule amendments, issue a second public notice to solicit comments, and hold another public hearing.

**Responses to Comments Received During the Public Comment Period  
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**1. Comment:** Requests the time to submit the permit be changed from 180 days to at least 18 months to provide more time to budget the cost and allow time for the work.

**Response:** The 180 days is established in the Safe Dams Act (Act), Section 12-5-376, "Permits to construct and operate dams". Changes to the Act are outside the scope of this rulemaking. EPD will work with owners to establish compliance schedules for submittal of their permit application when additional time is necessary.

**2. Comment:** 391-3-8-.08(3)(a), (b), (c), and (d) require extensive information to be submitted as part of an application for a safe dams permit. While this information isn't mandated in the rules, it allows the Director to require it at his discretion. The commenter stated that this could be a burden for some dam owners and that the rules gave the Director too much discretion. The commenter suggests separating the requirements for new and existing dams and requiring less extensive information for existing dams.

**Response:** The proposed amendments did not include any changes to portions of the rule pertaining to content of applications. EPD's position is that the application content requirements, which include the Director's discretion to request certain information, are appropriate. The requirements in Rule 391-3-8-.08 are for the visual inspection report, or condition assessment report for the dam. This report identifies the deficiencies with the dam.

**3. Comment:** Requested information regarding the intent of the filling plan referenced in Rule 391-3-8-.09(3)(h)2., and if it would impact lake lowering for maintenance?

**Response:** A filling plan is required for new dams and existing dams that have had major renovations. A significant percent of dam failures occurring during the filling cycle therefore it is important to monitor the filling. Routine lowering of the lake for maintenance would not require a filling plan.

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**4. Comment:** In regard to the Engineering Guidelines, which were posted as a supplemental material along with the proposed rules, if the State adopts using equations to arrive at the breach width, then the time to failure that is calculated using this breach width should also be used. It is inappropriate to use someone's analysis to arrive at breach parameters and pick and choose which parts of the analysis to use. If the State adopts a method to arrive at a breach width, then use the corresponding time to failure for that breach width. Commenter is not in favor of using derived equations for breach widths because they are based on little data (mostly overtopping events) and do not consider the makeup of the dam.

**Response:** The Engineering Guidelines are supplemental material for the proposed rule amendments but are not an official part of them. EPD is updating the Engineering Guidelines to improve them, including providing additional guidance regarding the appropriate breach width to use in modeling the impact from a dam failure. EPD will continue to seek input from the engineering community on modifications to the Engineer Guidelines including the breach modeling criteria.

**5. Comment:** The 90 day timeframe for the owner to submit a modeling protocol and 150 days to complete the analysis to the Director to determine whether or not the dam should be reclassified to a Category I dam creates a hardship for dam owners, particularly if they must go through a procurement process to secure the services of an engineer.

**Response:** While EPD believes that in most cases the proposed times frames of 90 days to submit a modeling protocol and 150 days to complete the analysis are achievable, EPD recognizes that this may not be feasible in all cases as noted by the commenter. As such, EPD has revised the proposed rule amendments to provide for an extension to the deadlines if justifiable cause is demonstrated.

**6. Comment:** After four consecutive quarterly inspections for a dam less than 50 feet tall, please consider including in the waiver to reduce the frequency of the inspections to twice a year for the next year. Quarterly inspections are a hardship.

**Response:** The intent is for the owner to perform these quarterly inspections themselves without having to hire an engineer or other third party. EPD has developed an inspection form and instructions for use for these inspections and these inspections should not create a hardship. EPD believes that these periodic inspections are necessary and appropriate to protect public safety.

**7. Comment:** Consider including "City/County Engineer" in "engineer" definition.

**Response:** EPD did not propose changes to the definition of "engineer" as a part of this rulemaking. A City/County Engineer would be included within the existing definition for *engineer* if the individual meets the applicable criteria for *engineer of record*.

**8. Comment:** Change 391-3-8-.03(3) to read "the governing authority issuing the permit for the development shall require the Developer submit the Safe Dams Programs for review and approval the following information..."

**Response:** This provision of the rules is not proposed for amendment in this rulemaking. It is appropriate for the rules to place this responsibility on the local government because it is the local government that is considering granting authorization to construct a structure below a dam and that construction may cause the classification of the dam to change from Category II to

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Category I. The local government could pass the responsibility to obtain the relevant information to the developer as part of the approval process as long as the local government then submitted the information to EPD.

**9. Comment:** EPD is urged to strengthen certain sections of the regulations, including 391-3-.08(3) regarding application content. EPD should add a requirement for the dam owner to identify and assess all buried pipes and culverts beneath an impoundment.

**Response:** The proposed amendments did not include any changes to portions of the rule pertaining to content of applications. EPD's position is the existing application content requirements are appropriate. We note that EPD has proposed such a requirement for impoundments of coal ash through the NPDES permitting process. EPD will continue to consider this issue in regard to potential implementation through the Safe Dams permitting process.

**10. Comment:** Expressed concern about the discretionary nature of Rule 391-3-8-.03(6), "Inventory and Classification." If a Category II dam is placed on a "To Be Studied (TBS)" list, then it appears the structure could languish on the TBS list. As stated in this section, the Director "may" require further analysis, but requiring such analysis is within the Director's discretion. Only after the Director exercises this discretion is the dam owner required to submit more analysis.

**Response:** EPD believes this discretion is appropriate for the following reasons. First, this is a new requirement. Category II dams on the TBS list have never had to do this work before. Second, EPD intends to use a risk-based approach to begin working with dams on the TBS list that are the most critical to determine if they should be reclassified as Category I dams. This TBS list at present has more than 400 dams on it and putting all of them on some type of schedule is infeasible at this time. Third, this discretion is entirely consistent with the underlying statutory provision in Section 12-5-375(d) of the Act that gives the Director the authority to "direct and conduct investigations as the Director may reasonably deem necessary...and to require written reports from the owner or operator of any dam for the purpose of accomplishing its duties under this Code section."

**11. Comment:** Expressed concern about the lack of a clear inspection process for Category II dams. There are many Category II dams in Georgia that have failed or are in danger of failing. This rule exempts Category II dams from quarterly and annual inspections despite the fact that a Category II failure has and can harm private property and waterways. We ask EPD to do more—including requesting a statutory amendment—to provide for the inspection and permitting of Category II dams in order to protect the health, safety, welfare and property of the citizens of the state by reducing the risk of failure of Category II dams.

**Response:** The rule does not exempt Category II dams from inspections as claimed by the commenter. The Act provides EPD authority for EPD mandated inspections only for Category I dams. The Act does not provide authority to EPD to regulate Category II dams except to provide information necessary to fulfill the Director's responsibility to periodically inventory and classify all dams as Category I or Category II dams. EPD notes the request for a statutory amendment, however, that is outside the scope of this rulemaking.

**12. Comment:** Recommend that the engineer of record program guidelines and its administration be modified to allow more competition in this area, as is the case in other states, as well as federal and private entities that perform dam assessment and engineering work.

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EPD should consider modifying the program and its administration to streamline the application and review process. We suggest a process similar to that used in other states and federal agencies, such as submittal and review of a resume, references, and personal (or telephone) interviews.

**Response:** As noted by the Commenter, no changes to the definition of engineer of record were proposed as part of this rulemaking. The current definition requires an engineer of record to be a licensed professional engineer in the State of Georgia and to substantiate their qualifications to EPD prior to being engaged by an Owner/Operator of a dam. Concurrent with this rulemaking, EPD will seek input from the engineering community on the guidelines and process for substantiating qualifications and ensure that the engineer of record process is as efficient and effective as possible.

**13. Comment:** We would like to see the rules state that EPD will, after approving a Category I dam, provide a copy of the EAP to the local Emergency Management Agency along with a copy of the computer model used for the breach analysis.

**Response:** The intent is for the owner to work with the local Emergency Management Agency when developing the EAP and to share a copy with them upon completion. The Division would provide a copy to the local Emergency Management Agency if requested.

**14. Comment:** The proposed regulations that require Category II dam owners to conduct further analysis to assist the Director in his determination of whether or not the dam should be reclassified to Category I are arbitrary and capricious in that no defined standard or listing of factors beyond downstream development is established. No procedures are provided to appeal a classification to Category I. Additionally, the dam owners should be reimbursed by the state should an analysis show the dam is not Category I.

**Response:** Section 12-5-375(d) of the Act is clear that the Director may require the owner to submit information necessary for determining classification of the dam. The proposed rule is entirely consistent with the authority granted by the statute. EPD agrees with the commenter that there should be a legitimate and clear basis for EPD to request that information. EPD has revised the proposed rule amendments to include a requirement that EPD will document the basis for the needed information when it sends written notification to the dam owner to do the analysis. The commenter also stated that there should be an appeal process. The provisions for all such challenges, including challenges to actions of the Director under the Safe Dams Act are governed by EPD rules in Chapter 391-1-2. There are no provisions in the statute for reimbursement of expenses incurred by the dam owner to submit the information.

**15. Comment:** Requests the Division find some vehicle for owners who have met the intent of the law to not be impacted by unnecessary and expensive regulations.

**Response:** EPD agrees with this comment and has worked diligently to balance any costs associated with these rules with the critical public safety issues that arise from Category I dams.