



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

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MEMORANDUM

To: Richard E. Dunn, Director
Environmental Protection Division

From: James A. Capp, Chief
Watershed Protection Branch

Subject: Responses to Comments Received During the Public Comment Period Regarding Proposed Amendments to Rules for Safe Drinking Water, Chapter 391-3-5, and Rules for Environmental Planning Criteria, Chapter 391-3-16

On October 5, 2018, EPD issued a public notice requesting comments on proposed amendments to the Rules for Safe Drinking Water, Chapter 391-3-5, and the Rules for Environmental Planning Criteria, Chapter 391-3-16. A public hearing was held at 2:00 p.m. on November 1, 2018, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. The public comment period ended on November 8, 2018.

EPD received written comments from five organizations during the public comment period that were opposed to the proposed rule amendments. Those organizations included: Cobb County-Marietta Water Authority, Douglasville-Douglas County Water and Sewer Authority, Metropolitan North Georgia Water Planning District, Paulding County, and Georgia Water Coalition. In addition, EPD also received verbal comments during the public hearing from Chattahoochee Riverkeeper and Macon Water Authority in opposition to the proposed rule amendments.

A summary of the comments received and EPD's responses to the comments is attached. No changes to the proposed rule amendments are recommended as a result of comments received.

Responses to Comments Received During the Public Comment Period
October 5, 2018 – November 8, 2018
Regarding Proposed Amendments to Rules for Safe Drinking Water, Chapter 391-3-5,
and Rules for Environmental Planning Criteria, Chapter 391-3-16

1) Comment: Several commenters asserted that the proposed rule amendments would be more permissive of and would encourage more recreation on water supply reservoirs, with one commenter asserting that the proposed rule amendments would put pressure on water utilities to emphasize recreational uses and not drinking water safety. The commenters expressed concern about the addition of “adjacent property owner access” as a permissible recreational use, and the addition of “private access” for docks as allowable buffer disturbances, in the reservoir management plan criteria of Rule 391-3-16-.01(8)(b).

Response: Comments noted. EPD agrees that protecting drinking water safety is extremely important and EPD believes that the reservoir management plans serve a useful role as part of that bigger picture. EPD respectfully disagrees, however, with the commenters’ assertions that the proposed rule amendments allow types of recreational activities that were not allowed under the existing rules or that the rule amendments jeopardize drinking water safety. As noted in the Synopsis for the proposed rule amendments, the rule language has been modified to place more emphasis on the recreational opportunities for the drinking water reservoirs and less emphasis on the options for the reservoir owners to put prohibitions or restrictions on the recreational uses as part of their reservoir management plan. Despite that modification, the types of recreational uses addressed by a reservoir management plan remain the same. Adjacent property owner access has always been a possibility. With these rule amendments, adjacent property owner access must be addressed in the reservoir management plan. Whether or not any adjacent property owner access is allowed is up to the discretion of the reservoir owner and subject to the approval of EPD.

2) Comment: Many of the commenters expressed concerns that allowing more recreation would lead to potential impacts on water quality and water quantity.

Several commenters asserted that additional recreation will lead to higher water supply treatment costs and introduce new risks to the water supply. Those commenters cited support for the American Water Works Association’s Policy Statement on Recreational Use of Domestic Water Supply Reservoirs (AWWA Policy Statement), which emphasizes the protection of public health and drinking water quality as the highest priority in operational decisions for reservoirs used jointly for water supply and recreation. One commenter noted current development pressures on their water supply reservoir that would encroach on the existing buffer and lead to water quality impacts.

Several commenters expressed concerns that allowing more recreation would lead to potential impacts on water quantity through the potential for impacts on water supply operations and project yields. The commenters’ concerns focused on potential challenges that could result from enabling adjacent private landowner access to public water supply reservoirs. One commenter specifically asserted that increased use of private docks on local water supply reservoirs introduces new potential conflicts between water supply operators and recreational users over water quantity and water levels. They noted that as reservoirs are drawn down to meet water supply needs, docks are likely to be on dry land and dock owners who oppose the drawdown may put pressure on local leaders or even resort to litigation in order to have water levels

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maintained. Under those circumstances, there would be less water drawn down for water supply purposes, decreasing the available yield from the reservoir and constraining the reservoir owner's ability to fully utilize the reservoir for water supply. The commenter provided suggested rule language that would prohibit any recreational uses that "adversely affect the yield of the reservoir," require that the reservoir management plan "stipulate that access to docks shall not be considered in operating the reservoir," and prohibit private docks unless EPD has granted a "prior written approval."

Response: In general, the commenters seek to shift most, or all, of the responsibility from the owner of the water supply reservoir to EPD to prohibit the recreational uses that the commenters do not want at water supply reservoirs. EPD believes that the rule amendments appropriately place the responsibility to restrict, or allow, recreational uses on the reservoir owner, with EPD review and approval. If the reservoir owner is concerned about the unacceptable water quality and/or water quantity impacts from certain recreational uses then the reservoir owner should not propose those uses in the reservoir management plan or should include appropriate mitigating measures in the reservoir management plan.

The rule amendments are fully consistent with the AWWA Policy Statement. Along those lines, the commenters ignored three key elements of the AWWA Policy Statement. First, the AWWA Policy Statement acknowledges that recreational uses may be appropriately considered at water supply reservoirs. Second, the AWWA Policy Statement assumes that the primary decision maker in considering recreational uses at water supply reservoirs is the reservoir owner. Third, the AWWA Policy Statement recommends that reservoir management plans be developed. Each of these three elements are included in the EPD rules.

3) Comment: One commenter asserted that EPD should continue to have a role in determining what recreational uses are appropriate to ensure water supply benefits used to justify reservoir projects (as evaluated by EPD and other agencies) are not adversely affected by recreational uses. Another commenter encouraged the state to take the lead in protecting yield and water quality with a continued conservative approach in reviewing and approving reservoir management plans.

Response: Comments noted. EPD will continue to work with water supply reservoir owners in the development and review of their reservoir management plans. EPD primarily addresses reservoir water supply yield and water supply need through the water withdrawal permitting regulations.

3) Comment: One commenter expressed their view that DNR should not take any action that could hinder the development of future water supply projects in Georgia, that could create conflicts or inefficiencies in the operation of an existing regional water supply reservoir by expanding uses post-permitting, or that could result in the deterioration of water quality.

Response: Future water supply projects will continue to be evaluated based on need, reasonable use, and consistency with regional water plans. These rule amendments will not change the process for consideration of future water supply projects. Recent water supply projects have

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allowed recreational activities in and around the reservoir and that did not hinder approval of those projects. For example, the Hard Labor Creek Reservoir Management Plan allows recreational activities.

4) Comment: One commenter noted that Rule 391-3-16-.01 did not address (a) the process and criteria for amending existing reservoir management plans, or (b) how reservoir management plans are handled where there were multiple reservoir owners, and the commenter provided suggested rule language to address those items.

Response: The process and criteria for amending an existing reservoir management plan is the same as for a new reservoir management plan. The reservoir management plan shall address the proposed recreational use of the reservoir and the maintenance of a buffer around the reservoir subject to the approval of EPD (see Rule 391-3-16-.01(8)(a) and (b)). Any recreational uses shall take into consideration the protection of water quality of the reservoir for drinking water purposes and to ensure that the water quality of the reservoir is adequately protected (see Rule 391-3-16-.01(8)(b)1.) For reservoirs with multiple owners, EPD would expect the legal agreement(s) amongst the owners to define the roles and responsibilities for operation of the reservoir, including the reservoir management plan. This would typically manifest itself through the water withdrawal permitting process.

5) Comment: One commenter expressed potential concerns where water supply reservoirs are located in a separate jurisdiction from the project owner and the enforcement of reservoir management plan provisions is accomplished through the other jurisdiction's local ordinances. In such instances, the commenter noted that the project owner's ability to protect water quality would be threatened if the other jurisdiction fails to enforce the reservoir management plan. They also expressed concern about the project owner's ability to maintain their property rights where the other jurisdiction broadens access or recreational use. The same commenter also expressed concern about how the proposed rule amendments might impact existing regional water supply reservoirs that are under joint ownership, noting that potential disagreements between owners over management of a reservoir could result when there are newly created competing uses.

Response: Comments noted. EPD notes that the provisions of Rule 391-3-16-.01(8) continue to require that a reservoir management plan "address the recreational use of the reservoir and the maintenance of a buffer around the reservoir," whether the reservoir is owned by a separate jurisdiction or is jointly owned by more than one owner. To that extent, the concerns expressed by the commenter are the appropriate subject for discussion and agreement among all jurisdictions who have responsibility under the reservoir management plan, and EPD would expect that the provisions of the reservoir management plan regarding recreational uses and buffer maintenance be met.

6) Comment: One commenter specifically opposes the provision of access to adjacent private property owners where state or federal financial assistance was used to develop the water supply

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reservoir and access is limited only to private property owners. Their opposition is based on the concern that publicly funded water supply reservoirs might become private amenity lakes.

Response: Comment is outside the scope of the relevant statute and rulemaking, which is to protect drinking water while providing a process to allow recreational use.

7) Comment: Two commenters expressed their opposition to the changes in buffer requirements in Rule 391-3-16-.01(8)(b), on the basis that the proposed rule amendments would allow adoption of buffers less than 150 feet and would eliminate a condition that limited consideration of buffers of differing sizes to “ground slopes and soil types.” The commenters asserted that the proposed rule amendments created ambiguity as to what considerations would apply to justify a reduction in the buffer size.

Response: The change in the criteria for allowing adoption of buffers less than 150 feet is consistent with the overall intent of the rule to protect drinking water through the planning process. The previous criteria of “ground slopes and soil types” was vague and arguably arbitrary.

8) Comment: One commenter also expressed concerns about inconsistency in measuring and defining buffers in Georgia, citing specific language from two portions of Chapter 391-3-16. The commenter offered their opinion that the larger the buffer around a drinking water supply reservoir, the better for the purpose of maintaining the highest and best water quality at the lowest cost to utility rate payers.

Response: Comment noted. The rule still requires a 150 foot buffer with any buffer intrusions and/or adoption of a different buffer size to be addressed in the reservoir management plan subject to EPD approval.

9) Comment: One commenter expressed concern that the proposed rule amendments could result in difficulties in permitting future reservoir projects with the U.S. Army Corps of Engineers (Corps) if that agency believed that the proposed reservoir was not going to be used primarily for the purpose of drinking water supply. Another commenter suggested that EPD clarify the process for reducing a reservoir buffer to less than 150 feet after consultation with the Corps, as they also regulate the permitting of reservoir projects.

Response: Comments noted. The proposed rule amendments are only designed to address the EPD’s reservoir management plan requirements and do not affect any Corps requirements. EPD does not believe that the proposed rule amendments would impact any existing Corps requirements.

10) Comment: One commenter asserted that it was inconsistent for EPD to encourage source water protection programs for all drinking water sources, while at the same time lessening the emphasis on mandatory protection measures for local and regional reservoirs developed specifically for water supply.

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Response: Comment noted. EPD respectfully disagrees that the proposed rule amendments would lessen the protections afforded to water supply reservoirs.

11) Comment: One commenter suggested that EPD form a stakeholder group of potentially affected utilities before any rule amendments go forward, and another commenter recommended that EPD develop a set of reservoir management plan guidelines that must be followed if the proposed rule amendments are adopted. Both commenters provided suggestions for stakeholders or EPD to consider.

Response: Comments noted. EPD notes that the standard for the allowance of recreational activities at reservoirs used for public water supply remains the same: that the water must be of such quality that, after treatment, it will meet the Safe Drinking Water Rules (391-3-5-.06(1)(b)). As such, EPD does not believe that a stakeholder process is warranted prior to the proposed rule amendments being adopted, but EPD will take the other recommendations for future guidance under consideration.