

Georgia Department of Natural Resources

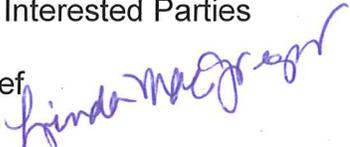
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July 24, 2012

MEMORANDUM

TO: Local Issuing Authorities and Other Interested Parties

FROM: Linda MacGregor, P.E., Branch Chief
EPD Watershed Protection Branch 

SUBJECT: Local and State Permitting and Buffer Variance Requirements for Dams

The intent of this memorandum is to clarify the permitting and buffer variance requirements for the construction and maintenance of dams, including "emergency" scenarios.

In general, land-disturbing activities associated with the construction and maintenance of dams are subject to the permitting and buffer variance requirements delineated in the Georgia Erosion and Sedimentation Act (GESA), the NPDES General Permits for Storm Water Discharges Associated with Construction Activity and the Rules for Erosion and Sedimentation Control. In addition, authorization may be required from the United States Army Corps of Engineers if the land-disturbing activities impact Waters of the United States, including jurisdictional wetlands and streams.

In all instances, regardless of exemptions, adequate erosion and sedimentation control measures (i.e., Best Management Practices) must be provided to protect the State's soils and waters.

Scenario 1 – Construction, maintenance and/or modification⁽¹⁾ of dams for recreational and/or stormwater management ponds where the disturbed area of the project (including any disturbed areas flooded by the impoundment) is equal to or greater than one (1) acre:

- In an area with a certified Local Issuing Authority (LIA), a local Land Disturbing Activity (LDA) permit is required.
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a Notice of Intent (NOI), NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan (Plan).
- In an area with no certified LIA, a fee of \$80 per acre disturbed⁽³⁾ must be paid to the Environmental Protection Division (EPD). In an area with a certified LIA, a

fee of \$40 per acre disturbed must be paid to EPD and a fee of \$40 per acre disturbed must be paid to the LIA. The NPDES General Permit fees are in addition to any LDA permit fees required by the LIA.

- In an area with a certified LIA, multiple copies of the Plan (as specified by the LIA) must be submitted to the LIA for review and approval or disapproval. In an area with no certified LIA regulating the project, a single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- For projects with land disturbances equal to or greater than 50 acres, regardless of the existence of a certified LIA, a single copy of the Plan must be submitted to the appropriate EPD District Office.
- Buffer variance applications must be submitted to the EPD Watershed Protection Branch for review and approval or disapproval. Incomplete applications will be returned to the applicant.

Scenario 2 – Construction, maintenance and/or modification⁽¹⁾ of dams for **recreational and/or stormwater management ponds** where the disturbed area of the project (including any disturbed areas flooded by the impoundment) is less than one (1) acre and located within 200 feet of any perennial State Waters⁽⁵⁾:

- In an area with a certified LIA, a local LDA permit is required (O.C.G.A. § 12-7-17(8)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is **not** required if the project is not located within a larger common plan of development.
- In an area with a certified LIA, multiple copies of the Plan (as specified by the LIA) must be submitted to the LIA for review and approval or disapproval.
- Buffer variance applications must be submitted to the EPD Watershed Protection Branch for review and approval or disapproval. Incomplete applications will be returned to the applicant.

Scenario 3 – Construction, maintenance and/or modification⁽¹⁾ of dams for **recreational and/or stormwater management ponds “technically supervised” by the Natural Resources Conservation Service (NRCS)** where the disturbed area of the project (including any disturbed areas flooded by the impoundment) is equal to or greater than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(7)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a NOI, NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan.
- A fee of \$80 per acre disturbed⁽³⁾ must be paid to EPD.

- A single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- Buffer variance applications must be submitted to the EPD Watershed Protection Branch for review and approval or disapproval. Incomplete applications will be returned to the applicant.

Scenario 4 – Construction, maintenance and/or modification⁽¹⁾ of dams for **recreational and/or stormwater management ponds “technically supervised” by the Natural Resources Conservation Service (NRCS)** where the disturbed area of the project (including any disturbed areas flooded by the impoundment) is less than one acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(7)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is **not** required if the project is not located within a larger common plan of development.
- Project is **exempt** from the State-mandated buffer requirements (O.C.G.A. § 12-7-17(7)).

Scenario 5 – Construction of dams for **public drinking water reservoirs** where the disturbed area of the project (including any disturbed areas flooded by the impoundment) is equal to or greater than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(11)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a NOI, NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan.
- A fee of \$80 per acre disturbed⁽³⁾ must be paid to EPD.
- A single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- Project is **exempt** from the State-mandated buffer requirements (O.C.G.A. § 12-7-17(11)).

Scenario 6 – Maintenance of **public drinking water reservoir dams and shorelines** where the disturbed area of the project is equal to or greater than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(11)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a NOI, NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan (Plan).
- A fee of \$80 per acre disturbed must be paid to EPD.

- A single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- Project is **exempt** from the State-mandated buffer requirements (O.C.G.A. § 12-7-17(11)).
- Projects such as boat launches and docks (including access ways) are not considered maintenance projects. Buffer variance applications for these projects must be submitted to the EPD Watershed Protection Branch.

Scenario 7 – Maintenance of **public drinking water reservoir dams and shorelines** where the disturbed area of the project is less than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(11)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is **not** required.
- Project is **exempt** from the State-mandated buffer requirements (O.C.G.A. § 12-7-17(11)).
- Projects such as boat launches and docks (including access ways) are not considered maintenance projects. Buffer variance applications for these projects must be submitted to the EPD Watershed Protection Branch.

Scenario 8 - Maintenance of a **non-erodible drainage structure** on a dam, as defined in GESA (O.C.G.A. § 12-7-3(7)), and **technically supervised by NRCS** where the disturbed area of the project is equal to or greater than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(7)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a NOI, NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan.
- A fee of \$80 per acre disturbed must be paid to EPD.
- A single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- Project is **exempt** from the State-mandated buffer requirements for non-trout waters (O.C.G.A. § 12-7-6(15)(A)(iv)).

Scenario 9 - Maintenance of a **non-erodible drainage structure** on a dam, as defined in GESA (O.C.G.A. § 12-7-3(7)), and **technically supervised by NRCS** where the disturbed area of the project is less than one (1) acre:

- A local LDA permit is **not** required (O.C.G.A. § 12-7-17(7)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is **not** required.

- Project is **exempt** from the State-mandated buffer requirements (O.C.G.A. § 12-7-17(7)).

Scenario 10 - Maintenance of a **non-erodible drainage structure** on a dam, as defined in GESA (O.C.G.A. § 12-7-3(7)), where the disturbed area of the project is equal to or greater than one (1) acre:

- In an area with a certified LIA, a local LDA permit is required.
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity⁽²⁾ is required, which includes the submittal of a NOI, NPDES General Permit – Fee Form, and an Erosion, Sedimentation and Pollution Control Plan.
- In an area with no certified LIA, a fee of \$80 per acre disturbed must be paid to EPD. In an area with a certified LIA, a fee of \$40 per acre disturbed must be paid to EPD and a fee of \$40 per acre disturbed must be paid to the LIA. The NPDES General Permit fees are in addition to any LDA permit fees required by the LIA.
- In an area with a certified LIA, multiple copies of the Plan (as specified by the LIA) must be submitted to the LIA for review and approval or disapproval. In an area with no certified LIA regulating the project, a single copy of the Plan must be submitted to the EPD Watershed Protection Branch⁽⁴⁾ for review and a second copy of the Plan must be submitted to the appropriate EPD District Office prior to or concurrent with the NOI submittal.
- For projects with land disturbances equal to or greater than 50 acres, regardless of the existence of a certified LIA, a single copy of the Plan must be submitted to the appropriate EPD District Office.
- Project is **exempt** from the State-mandated buffer requirements for non-trout waters (O.C.G.A. § 12-7-6(15)(A)(iv)).

Scenario 11 – Maintenance of a **non-erodible drainage structure** on a dam, as defined in GESA (O.C.G.A. § 12-7-3(7)), where the disturbed area of the project is less than one (1) acre and located within 200 feet of any perennial State Waters⁽⁵⁾:

- In an area with a certified LIA, a local LDA permit is required (O.C.G.A. § 12-7-17(8)).
- Coverage under the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is **not** required.
- In an area with a certified LIA, multiple copies of the Plan (as specified by the LIA) must be submitted to the LIA for review and approval or disapproval.
- Project is **exempt** from the State-mandated buffer requirements for non-trout waters (O.C.G.A. § 12-7-6(15)(A)(iv)).

Emergency Projects – The Safe Dams Unit will determine if the “damage to the dam or the area needing repair” presents a serious risk of failure of the dam that would require immediate action. Projects that are determined to be an “emergency” by the EPD Safe Dams Unit are not subject to the State-mandated buffer variance requirements.

However, if the disturbed area of an emergency project is equal to or greater than one (1) acre, permit coverage under Part IV(A)(6) of the NPDES General Permits for Storm Water Discharges Associated with Construction Activity is required.

In all instances, regardless of exemptions, adequate erosion and sedimentation control measures must be provided to protect the State’s soils and waters. If additional information is required, please contact Jan Sammons with the EPD Erosion and Sedimentation Unit at (404) 675-6240 or Tom Woosley with the EPD Safe Dams Unit at (404) 362-2678.

An information guide, *Building or Renovating a Pond in Georgia – A Pond Guide for Citizens*, is also available for landowners in Georgia who want to build a new pond or to renovate an existing pond. There are numerous laws and agencies regulating pond construction in Georgia. This document identifies the multiple agencies available that provide assistance in planning and designing ponds.

- (1) Draining a pond does not require a buffer variance from the EPD Watershed Protection Branch; however, a buffer variance application must be submitted for any encroachments within the State-mandated buffers or modifications to the pond, **such as breaching the dam**.
- (2) The NPDES General Permit forms are located on the EPD website, www.gaepd.org.
- (3) The disturbed acreage for a reservoir project includes any areas disturbed during clearing and subsequently flooded by the impoundment.
- (4) The EPD Watershed Protection Branch will review these Plans for deficiencies using the applicable Erosion, Sedimentation and Pollution Control Plan Checklist (including the delineation of State Waters and State-mandated buffers).
- (5) A certified Local Issuing Authority may enact a local Erosion and Sedimentation Control Ordinance that exceeds the acreage provisions of the Georgia Erosion and Sedimentation Act.