

**SYNOPSIS OF  
PROPOSED AMENDMENTS TO THE  
RULES OF THE DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
RELATING TO EROSION AND SEDIMENTATION CONTROL, CHAPTER 391-3-7**

The Proposed Amendments revise **Chapter 391-3-7 Rules for Erosion and Sedimentation Control.**

**Purpose of Amendment:**

The primary purpose of the proposed rule amendments is to add a criterion to the Buffer Variance Procedures and Criteria Rule to allow EPD to require mitigation for certain projects that cannot qualify for a buffer variance under criteria (h). Other amendments to that rule will add exemptions to reflect language passed in HB 1359 earlier this year to exempt seawall construction on Lake Oconee and Lake Sinclair and to exempt the construction of public water system reservoirs in order to be consistent with the Georgia E&S Act and the NPDES General Permits for Construction Activity. An exemption will be removed because the general variance for small trout streams does require approval from either the local issuing authority or EPD. Language is also added to clarify that EPD is the regulating entity when there is no local issuing authority dealing with a general variance. A definition for "Infrastructure" associated with the amendment of rule 391-3-7.05 will be added to the Definitions Rule. Other proposed rule amendments accomplish miscellaneous housekeeping changes, which include correcting numerical and alphabetical inconsistencies.

**391-3.7-.01 Definitions** is proposed for amendment by adding a new definition (k) "Infrastructure", associated with the amendment of rule 391-3-7.05. The remaining definitions will be re-lettered accordingly.

**391-3-7-.05 Buffer Variance Procedures and Criteria (1)** is proposed for amendment by removing exemption (a) because the general variance for small trout streams do require approval from either the local issuing authority or EPD. The remaining exemptions will be re-lettered accordingly. Exemption (d) is being added to reflect language passed in HB 1359 earlier this year to exempt seawall construction on Lake Oconee and Lake Sinclair. Exemption (e) is being added to exempt the construction of public water system reservoirs in order to be consistent with the Georgia E&S Act and the NPDES General Permits for Construction Activity.

**391-3-7-.05 Buffer Variance Procedures and Criteria (2)** is proposed for amendment by adding a new criteria (k) to allow EPD to require mitigation for certain projects that cannot qualify for a buffer variance under criteria (h).

**391-3-7-.05 Buffer Variance Procedures and Criteria (10)** is proposed for amendment by adding language to clarify that EPD is the regulating entity when there is no local issuing authority dealing with a general variance.

## **STATEMENT OF RATIONALE**

### Rules for Erosion and Sedimentation Control, Chapter 391-3-7

Chapter 391-3-7, Rules for Erosion and Sedimentation Control establishes, pursuant to the Official Code of Georgia Annotated (O.C.G.A.), Section 12-7-1, rules for the establishment and implementation of a state-wide comprehensive soil erosion and sediment control program. The Georgia Rules for Erosion and Sedimentation Control under the Erosion and Sedimentation Act of 1975 provide for a state-wide program to conserve and protect the land, water, air and other resources of the state by ensuring proper soil erosion and sedimentation control practices at land clearing and construction activities. To aid in the implementation of this program, EPD is proposing to amend two (2) rules in the Georgia Rules for Erosion and Sedimentation Control.

A recent court decision has resulted in Waters of the U.S. jurisdictional calls that conflict with state waters calls. An increasing number of projects have sections of stream or entire streams that have been determined to be non-jurisdictional by the U.S. Army Corps of Engineers (USACE). As a result, there are projects that cannot qualify for criteria (h) in the Rules for Erosion and Sedimentation Control because they do not have USACE approved Section 404 mitigation, nor do they qualify for any of the other criteria.

The proposed criteria (k) will allow projects that have drainage features the USACE has not called jurisdictional, but are jurisdictional waters of the state, to be eligible for a stream buffer variance. The majority of these projects would have required a USACE permit in the past, before the changes in the federal law, and therefore would have previously been eligible for a stream buffer variance under criteria (h).