



31 Titus Mill Road
Pennington, N.J. 08543
(609) 737-3735

October 19, 2005

Gary J. Bower
NJDEP, Office of Legal Affairs
401 East State Street
PO Box 402
Trenton, NJ 08625-0402

**RE: DEP Docket No. 32-05-08
NJDEP Riparian Zone (Stream Corridor) Anti-degradation Policies
Proposed Amendments to NJAC 7:9B-1.5(d) 5 and 6**

Dear Mr. Brower:

The Stony Brook-Millstone Watershed Association (the Association) applauds the Department of Environmental Protection's (DEP) efforts to safeguard the state's water quality by proposing the establishment of an "antidegradation policy for nonpoint source discharges for all surface waters" and specifically for proposing additional protection for stream corridors. New Jersey is the most densely populated state in the nation and protecting clean water today is essential to meet the public health and environmental needs of New Jersey's present and future generations. The Association has for years asserted, as compellingly articulated in the notice of proposed amendments to the Surface Water Quality Standards (SWQS), "the most-cost effective solution to minimizing the impact of nonpoint sources is by maintaining a riparian zone."

While the Association strongly supports increasing protection for stream corridors, we urge DEP to clarify several provisions from the proposal and reconsider several others. We offer these comments and recommendations based on years of experience working with local communities, and respectfully request a meeting with DEP officials to discuss these issues in more detail.

The Stony Brook-Millstone Watershed Association is a non-profit membership organization dedicated to preserving clean water and the natural environment in the 265-square mile area of central New Jersey drained by Stony Brook and the Millstone River. The Association preserves open space by maintaining an 830-acre nature reserve, provides year-round environmental education programs, monitors the water quality of local streams, and engages towns, businesses, and landowners to improve land use decisions that impact our environment.

The Association works in partnership with municipalities within our watershed to implement local ordinances that protect natural resources. Since 1996, we have promoted

a municipal Model Stream Corridor Ordinance, very similar to the Delaware & Raritan Canal Commission regulations, which restricts development within 100-year flood plains and an additional 100-foot buffer. We strongly believe that such measures are the most effective means of ensuring clean water, mitigating the impacts of flooding, and providing wildlife with adequate habitat to leave flood prone areas when necessary. Currently, eight of the 26 municipalities in our watershed have implemented stream corridor regulations and we continue to work with the municipalities in our watershed to adopt additional protections for stream corridors.

We have the following specific comments on the proposed regulation:

1. The proposal should be revised to clarify that municipalities maintain the authority to implement greater protections for stream corridors than provided by the state.

Currently, eight of the 26 municipalities in our watershed have implemented stream corridor regulations that are more protective of riparian zones than the measures proposed in the notice. DEP should be clear that the new state regulations would not affect these more protective local ordinances.

The authorities granted under the Municipal Land Use Law (MLUL 40:55D) and the goals of the State Plan Policies protect public health and safety, and the protect natural resources. These authorities provide sufficient legal support for municipalities to adopt and enforce their own stream corridor ordinances. The Delaware & Raritan Canal Commission rules also encourage communities to adopt a stream corridor ordinance, and suggest that their rules serve as a minimum, not a maximum, for stream corridor protection (N.J.A.C. 7:45-6.7). In addition, the new stormwater regulations (NJAC 7:8-2.4) allow towns to include a *stream corridor protection plan*. Attached are specific references from our model ordinance. Attachment A.

The authority is clear, but the process to adopt these local ordinances is not always easy, requiring months of review and public debate. To provide sufficient protection to streams and water quality, and to reduce confusion and hardships for property owners, municipalities should be given the discretion to maintain their existing ordinance, and adopt new ordinances, if they are more protective than state regulations.

2. The proposal should be revised to clarify that the Delaware & Raritan Canal Commission Rules will not be pre-empted

The Delaware & Raritan Canal Commission currently implements riparian buffer requirements that are more protective than the proposed SWQS amendments. The D&R Canal Commission rules for stream corridor preservation apply to all major development projects that fall within designated sections of the “Review Zone” (N.J.A.C. 7:45-1 et seq.).

For decades, these regulations have applied to many streams, tributaries and communities in central New Jersey regardless of whether they are rural, suburban, or urban. These regulations have proven to be cost effective and enforceable even in urban settings. Much of the Millstone watershed region is designated for growth as Planning Areas 1 or 2 and it is imperative for municipalities and the D&R Canal Commission to maintain their rights to implement these riparian buffer protections, and not undermine these existing benefits and achievements.

3. The proposal should protect flood prone areas

When the state adopted the 300-foot buffer for Category One waters, it provided significant references from the scientific literature that affirmed the effectiveness of that sized buffer in both improving water quality and mitigating the risk of flooding. The proposed amendments to SWQS do not adequately address the threat of flooding or provide reasonable assurances that the 150 or 50 foot proposed buffer widths would minimize such threats.

Federal and state flood hazard programs discourage development within the 100-year floodplain in order to prevent loss of life, reduce damage to property, and reduce flooding costs to the general public. In light of the recent flooding across New Jersey, especially in urban and suburban centers, public policies should not condone or encourage development or re-development in flood prone areas. The state should recognize that:

- ✓ Development in a flood prone area is not a socially or economically acceptable alternative for property owners, residents, and citizens that may ultimately pay for flood damage costs and necessary emergency assistance.
- ✓ Development in flood prone areas increases the likelihood that flooding will damage downstream properties.

The DEP should promote a statewide policy consistent with the D&R Canal Commission regulations and the model stream corridor ordinance promoted by the Association, to restrict development 100 feet from the 100-year flood plain or 150 feet from the stream bank (whichever is greater). Such measures are the most effective means of ensuring clean water, mitigating the impacts of flooding, and protecting public safety and wildlife.

4. The proposal should adhere to Environmental Justice policies

The proposed stream corridor regulations address all new or expanded development along *Category Two* streams, and restrict disturbances/ development within a 150 foot buffer in order to protect water quality. However, NJDEP also proposes that development that qualifies, as “*necessary and justifiable social and economic development*” would be required to maintain a minimum buffer of only 50 feet. This policy could broadly apply to streams in the growth areas of Planning Areas 1 and 2, identified in the State Plan. Reduced riparian buffers in PA1 and PA2 areas and designated centers could increase the likelihood of potential flooding and damage to surface water quality in these more heavily populated areas.

This year, the Governor has declared a state of emergency in New Jersey for flooding on three separate occasions. As evidence by the September 2004 and April 2005 Delaware River floods in Trenton, and the October floods in northern New Jersey, growth areas with increased impervious cover are often highly impacted when our rivers and streams swell beyond their banks.

The Association is concerned that this proposed amendment to SWQS will not achieve the Overall Planning Objectives of the State Plan to “Conserve the State’s Natural Resources, Protect the Environment, and Prevent and Clean Up Pollution.” In addition, these measures appear to be inconsistent with the Environmental Justice Principles outlined in the President Clinton’s Executive Order #12898 and NJ Governor McGreevey’s Executive Orders # 96, which mandate that government be “*committed to ensuring that all of its citizens receive equal protection under the law; enjoy a healthy environment; and be given opportunities for consistent input into government decision making.*”

As stated above, we believe that a riparian buffer that restricts development 100 feet from the 100 year flood plain or 150 feet from the stream bank (whichever is greater) is the most effective way to ensure clean surface water and mitigate flood effects. Therefore, we believe that a 50-foot riparian buffer in PA1, PA2 and designated centers is inadequate.

In addition, this tiered policy does not account for potential impacts downstream of these more populated areas. The Millstone River, for example, is a drinking water source for many of the 500,000 residents of the Stony Brook-Millstone Watershed. The headwaters of the Millstone River begin in rural Millstone Township, flow north through more populated communities and then wind back through suburban and rural areas. The Association urges the DEP to reconsider its approach and provide instead for consistent protection of stream corridor buffers that are 100 feet from the 100-year flood plain or 150 feet from the stream bank (whichever is greater), except for waters in the Highlands region, Category One waters, and corresponding tributaries.

5. The proposal should define streams more clearly

Defining streams clearly is critical to effective enforcement of stream corridor protection regulations. The SWQS amendments state that streams will be defined based on information provided on USGS quadrant maps. We recognize that this works well with the GIS data and mapping. However, based on our experience, existing headwater areas of streams are often not depicted on USGS quadrant maps, yet these areas are vital to protect from development.

In addition, streams may have been straightened by past farming practices years ago, yet these man-made swales still serve as important conveyors of storm runoff and should be afforded protections or restrictions from development. Too many times these headwater areas and drainage ways have been filled in or streams have been channeled into culverts, reducing water quality.

The Association respectfully requests an opportunity to meet with DEP officials to discuss these issues in more detail. The short 30-day review period has limited our opportunity to comment more fully. Please call Jennifer Coffey, Director of our Watershed Management Program, at (609) 737-3735 to arrange such a meeting.

Thank you for this opportunity to comment on the proposal. We look forward to continuing these discussions.

Sincerely,

A handwritten signature in black ink that reads "Jim Waltman". The signature is written in a cursive, flowing style.

Jim Waltman
Executive Director

Copies:

Lisa P. Jackson, Assistant Commissioner
Mark Mauriello, Director of Land Use Regulations
Lawrence J. Baier, Director Watershed Management
Ken Klipstein, Bureau Chief of Watershed Planning