

COURT UPHOLDS 300-FOOT BUFFER TO PROTECT STREAMS

Hackensack Riverkeeper lauds sweeping decision by the State Appeals Court and strongly urges the municipalities of the upper Hackensack River watershed to embrace and apply it to the fullest extent of the law.

TRENTON -- Today the New Jersey Superior Court, Appellate Division, upheld a New Jersey Department of Environmental Protection (NJDEP) rule that is crucial to protecting water quality and riparian stream health in New Jersey from the effects of stormwater pollution. The rule places a protective 300-foot buffer on either side of streams that have been designated as "Category One" (C1), meaning that they have exceptional ecological, recreational and aesthetic characteristics and must be protected from "measurable changes" by law. The challenge to protecting such streams in a densely populated state like New Jersey is that a leading cause of pollution is stormwater runoff from roads, roofs and other impermeable surfaces; the surfaces also prevent rain from recharging groundwater and maintaining good stream flow.

"Buffers prevent stormwater pollution from reaching pristine streams and are important corridors for wildlife," said Carter H. Strickland, Jr., an attorney with the Rutgers Environmental Law Clinic who argued the case before the Appellate Division on behalf of environmental groups. "The Court recognized that streams are not drainage ditches to take out our trash, but organic ecosystems that deserve our protection."

"We hope that the DEP will now nominate more streams to Category One status to preserve that natural legacy for present and future

generations of New Jerseyans," Strickland added.

The environmental groups that filed a friend-of-the-court brief supporting the buffer rule were: American Littoral Society, Association of New Jersey Environmental Commissions, Delaware Riverkeeper Network, Delaware Riverkeeper, Hackensack Riverkeeper, the New Jersey Audubon Society, New Jersey Conservation Foundation, New Jersey Environmental Federation, New Jersey Public Interest Research Group, NY/NJ Baykeeper and the Sierra Club.

After a decade-long rulemaking process, the DEP comprehensively revamped its 1983 stormwater rules to include natural, low-maintenance stormwater controls and stringent performance standards for "major developments" that disturb more than one acre of land or that create more than a quarter-acre of impervious surfaces. One key element is the 300-foot setback from C1 streams, which prevents certain impervious surfaces near the river in order to protect water quality and the riparian corridor of highly-sensitive streams. As the Court noted, "[d]uring the approval process, substantial data and scientific evidence was adduced in support of the DEP's determination that the creation of 300-foot buffers was the appropriate level of protection for C1 water bodies." The evidence included studies showing that narrower buffers and other stormwater controls will become saturated with pollutants over time and lose their effectiveness; and that wildlife depend upon shade and other natural features of native streamside vegetation.

The New Jersey Builders Association sued to overturn the 300-foot buffer rule, which

it characterized as a general land use matter that is under the purview of municipalities rather than an environmental rule.

The Court rejected the Builders' argument in terms that leaves no doubt about DEP's broad authority to protect the environment. The Appellate Division found that there is a "close correlation between riparian land use and water quality, over which the DEP does exercise plenary power."

The Court also held that "[t]he Legislature, in a variety of measures, has given the DEP a wide array of power to address water quality and pollution concerns beyond traditional floodwater control, and to promulgate rules to protect the waters of the State." Thus, the 300-foot buffer rule was valid because there is a "clear nexus" with "a legitimate environmental objective" which may include water quality as well as recreational and aesthetic interests.

"C1 protections are among the strongest clean water regulations in America -- something New Jerseyans should be proud of," said Captain Sheehan. "Now we can be equally proud that our judiciary has done the right thing by our waterways and our people."

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Please note: The text of this press release was composed by Carter H. Strickland, Jr., Rutgers Environmental Law Clinic, on behalf of the amici curiae (Friends-of-the-Court) he represented.

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Click here to read the ruling: www.judiciary.state.nj.us/opinions/a3847-03.pdf