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Court Upholds NJ's Buffer Rule – DRN Claims Important Regional and National Precedent

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Wednesday, April 12, 2006, the Superior Court of New Jersey Appellate Division, issued a ruling upholding New Jersey's requirement for 300 buffers on either side of C-1 and associated perennial and intermittent streams.

The Delaware Riverkeeper Network was a major supporter of NJ's stormwater regulations and provided strong support and information documenting the need for the 300 foot buffer requirement. According to Delaware Riverkeeper Maya van Rossum "eyes across the country have been watching this case and whether or not some of the strongest buffer requirements in the country will withstand legal challenge. This case sets a crucial precedent that must be followed throughout the Delaware River watershed and across the nation." The Delaware Riverkeeper Network and a collection of environmental organizations from across the state were represented by the Rutgers Environmental Law Clinic and Delaware Riverkeeper Network's Senior Attorney Carole Hendrick in supporting the regulations against the New Jersey Builders' Association challenge.

Opponents of the regulatory requirement, the New Jersey Builders Association, challenged DEP's authority to issue the regulatory requirement claiming the buffer requirement functioned as a "no build" provision "directly regulating the use of land without regard to stormwater control or management and promulgated by the DEP without state-wide land use regulatory jurisdiction."

Rejecting this argument, the Court recognized and reaffirmed DEP's broad authority for protecting water quality and ecosystem health – according to the Court "The 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 this State." Notably, in its ruling, the Court noted the direct link between land use and water quality protection and the role DEP plays in connecting and regulating the two -- "appellant's argument overlooks the close correlation between riparian land use and water quality, over which

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DEP does exercise plenary power..."; "no one disputes that development in close proximity to C1 waters can have a deleterious effect on these waters whether or not stormwater is discharged directly to the stream." And the Court recognized the important role non-structural strategies, such as buffer protection, minimizing earth disturbance and minimizing impervious surfaces plays in protecting water quality.

According to the Court: "During 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 detrimental effects of stormwater runoff from land development were well documented in the record as was the need to use buffers to protect sensitive waterways."

Tracy Carluccio, Director of Special Projects for the Delaware Riverkeeper Network states: "Buffers are critical to the water quality and health of stream ecosystems. A recognition that a 300 foot buffer requirement provides the high level of protection necessary to protect the health of our high quality streams is enlightened and informed and provides necessary legal backing to what science has known all along – streams need buffers to be clean and healthy."

"This decision should send a crystal clear message to developers – you can't build everywhere," said Doug O'Malley, NJPIRG's Field Director. "We need to protect the land bordering our state's pristine waterways to fully implement stormwater protections."

Delaware Riverkeeper van Rossum noted the Court's expansive definition of the term water quality and the important role buffers play in stream protection "applauding these as important recognitions for the well-rounded role healthy streams and healthy buffers play in our communities and lives" – the Court specifically ruled "the DEP may impose a buffer to avoid development-related impacts on water quality unrelated to stormwater, ... or for reasons altogether unrelated to protecting water quality, such as for instance, recreation and aesthetics. In any event, aesthetics is a component of water quality."