

Act 38 Stream Determinations & Setbacks and DEPs Waters of the Commonwealth

Act 38 Virtual Roundtable Meetings

March 2022

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Act 38 Defines Streams and Buffers under 83.201 of the NM Regulations (Definition Section)

- ▶ "Intermittent Stream"
- ▶ "Perennial Stream"
- ▶ "Buffer or vegetated buffer"

"Intermittent Stream" Definition (Same for DEP Title 25 Chapter 92a & 102)

- ▶ A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the water table and obtains its flow from both surface runoff and groundwater discharges.
 - ▶ In dry years, may cease to flow at certain times of the year.
 - ▶ May flow all year in wet years.
 - ▶ May or may not show up as a blue line on the topographic map.
 - ▶ Field verification by writer and reviewer is extremely important. Go look!!
 - ▶ Require professional judgment in some instances.
 - ▶ If in doubt, it is safest to consider it as intermittent with setback.
 - ▶ Contact SCC regional coordinator for assistance in making a determination.



Intermittent
Stream



"Perennial Stream" Definition (Similar to DEP Title 25 Chapter 92a & 102)

- ▶ "A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting bottom dwelling aquatic animals".
 - ▶ Easier to identify than intermittent streams. Always flowing.
 - ▶ Generally are a blue line on the topographic map, but not always.
 - ▶ Field verification by writer and reviewer is extremely important. Go Look!!
 - ▶ Karst Topography - May be a blue line on topo map but not meet either definition.
 - ▶ In some instances, the blue line connects sinkholes & underground flow path.
 - ▶ Must make a determination in the field.



Manure Application Setbacks & Buffers - 83.294 "Nutrient Application Procedures"

- ▶ Manure may not be mechanically applied in the following situations.
 - ▶ Within 100' of the top of bank of a perennial or intermittent stream with a defined bed and bank, a lake or pond, unless a permanent vegetated buffer of at least 35' in width is used, to prevent manure runoff into the stream, lake or pond.
 - ▶ Within 100' of an existing open sinkhole unless a permanent vegetated buffer of at least 35' in width is used.
 - ▶ Within 100' of active private drinking water sources such as wells and springs.
 - ▶ Within 100' of active public drinking water source, unless other State or Federal laws require a greater isolation distance.
- ▶ Additional Winter Setbacks
 - ▶ Within 100' of above ground inlets to ag drainage system.
 - ▶ Within 100' of a wetland within 100-year floodplain of an EV stream.



Buffer Definition

- ▶ "Buffer or vegetated buffer" -
 - ▶ (i) A permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field.
 - ▶ (ii) There is no mechanical application of manure within the buffer area.
 - ▶ (iii) The purposes include slowing water runoff, enhancing water infiltration and minimizing the risk of any potential nutrients from leaving the field and reaching surface waters.



Pastures As Buffers

- ▶ Specific criteria must be met to use a pasture as a 35' buffer:
 - ▶ Ground cover provided by perennial vegetation must be maintained at 80% minimum.
 - ▶ Livestock access must be managed to maintain the min. 80% cover at all times. May need to:
 - ▶ Fence off the 35' buffer area to control grazing duration, intensity and frequency.
 - ▶ Establish alternative off-stream water sources and/or stream crossings.
 - ▶ Install other alternative management systems, practices or management.

Pastures as Buffers (Continued)

- ▶ All ACAs within the pasture must be addressed to eliminate any discharges (feeding or shade areas, etc.).
- ▶ Pastures with poor, somewhat poor or very poor drainage soils must limit grazing during times of high water table.
- ▶ No manure may be mechanically applied within the 35' buffer area.
- ▶ Criteria must be met and implemented at the time the animals are grazing.

DEP "Waters of this Commonwealth"

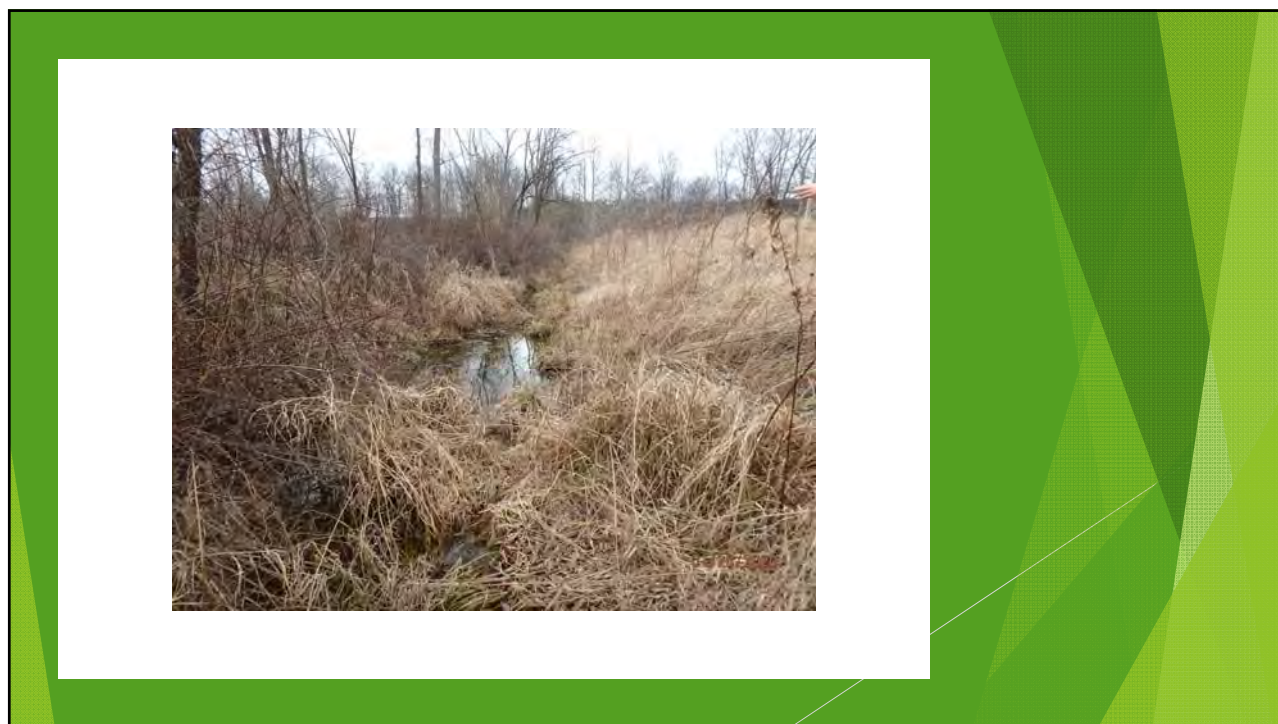
- ▶ "Rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth".
 - ▶ DEP can require a setback from any of these features.
 - ▶ DEP Biologist may get involved in making a determination.

CAFO Regulations - Setback Definition

- ▶ “Setback - A specified distance from the top of the bank of surface water, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to surface waters includes, but are not limited to:
 - ▶ Open tile line intake structures.
 - ▶ Sinkholes.
 - ▶ Agricultural wellheads”.

CAFO NMPs

- ▶ Setbacks are also required from the following:
 - ▶ Non-vegetated channels with defined bed & bank that outlet to surface water.
 - ▶ Non-vegetated channels with defined bed & bank that outlet to ground water (sinkhole).
 - ▶ Potential conduits to surface water.
 - ▶ Based on site specific conditions and location of surface waters.
 - ▶ Examples include vegetated channels and grassed waterways.
- ▶ **Note:** Generally only applies to land under management control of the CAFO.
 - ▶ However, as was stated earlier DEP can require setbacks based on site specific features and circumstances on any operation.





Questions or Comments?

