

Metropolitan River Protection Act

To provide definitions; to provide for a declaration of purpose; to provide for the development of comprehensive plans for the protection of any major stream which constitutes the primary source of public water supply in each Standard Metropolitan Statistical Area of this State having a population of more than 1,000,000 according to the United States Decennial Census of 1970, or any future such census; to provide for the preparation of such plans by the Metropolitan Area Planning and Development Commission established for each such area; to provide for public hearings; to provide for the regulation of certain activities in and adjacent to such major streams for the protection of water quality, control of erosion and reduction of flood hazards; to provide for the regulation of intensity of development adjacent to such major streams for such purposes; to provide that determinations under such plans shall be made by the governing authorities of the political subdivisions involved; to provide for review of such determinations by such Commissions; to provide for the filing of certain information; to provide for the issuance of certificates; to provide for the denial of certificates under certain conditions; to provide for appeals; to provide for injunctions; to provide penalties for willful and wanton violations; to provide for severability; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12-5-440. This Act shall be known as and may be cited as the "Metropolitan River Protection Act."

12-5-441. As used in this part, the term:

(1) 'Applicant' means any person who requests the issuance of a certificate under this part.

(2) 'Area' means a standard metropolitan statistical area recognized by the United States Department of Commerce, Bureau of the Census, and as set forth in Appendix C, County and City Data Book 1977: A Statistical Abstract Supplement, U.S. Department of Commerce, Bureau of the Census, which is located wholly within the State of Georgia and having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census.

(3) 'Board' means the Board of Natural Resources.

(4) 'Center' means the regional development center created for any county or group of counties included in each such area pursuant to the authority contained in Article 2 of Chapter 8 of Title 50.

(5) 'Certificate' means a building permit or other written authorization issued under this part and shall include, as a part thereof, the application and all documents supplied in support thereof and the approval by the governing authority together with any conditions thereto.

(6) 'Director' means the director of the Environmental Protection Division of the Department of Natural Resources.

(7) 'Flood plain' means that area adjacent to a major stream which is subject to being flooded with a probable frequency of at least once every 100 years. The center shall delineate the flood plain and in doing so may utilize or adopt studies prepared by the Corps of Engineers, United States Army, or such other studies as the center deems competent.

(8) 'Governing authority' means the governing authority of a political subdivision or, except for the purposes of paragraph (2) of subsection (c) of Code Section 12-5-445, a committee of such governing authority.

(9) 'Impoundment' means any body of water, formed by a dam, which is less than 25,000 acres in size.

(10) 'Land-disturbing activity' means scraping, plowing, clearing, dredging, grading, excavating, transporting, or filling of land or placement of any structure or impervious surface, dam, obstruction, or deposit.

(11) 'Major stream' means any stream or river, whether navigable or nonnavigable, which flows through any area and which is the source of at least 40 percent of the public water supply of any such area.

(12) 'Owner' means the record title owner, according to the deed records, of the land described in an application for a certificate and may or may not be the same person as the applicant. For purposes of this part, if the owner is a corporation, notice shall be given to the legal representative as delineated by records kept in the office of the Secretary of State.

(13) 'Person' means any individual, partnership, corporation, trust entity, or authority and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies.

(14) 'Plan' means the comprehensive plan or plans prepared by the center pursuant to Code Section 12-5-443.

(15) 'Political subdivision' means a county or a municipality in which the section of the river corridor to be affected or any part thereof is located.

(16) 'Public notice' means a legal notice in a newspaper of general circulation in the political subdivision at least once a week for two consecutive weeks.

(17) 'Stream corridor' means all land in the area in the watercourse, within 2,000 feet of the watercourse, or within the flood plain, whichever is greater.

(18) 'Tributary' means any flowing stream which flows into the major stream at a point which is within the stream corridor.

(19) 'Watercourse' means the banks of a major stream, including any impoundments thereon, in the area as defined by the low-water mark of such stream and any impoundments and including the entire bed of such stream and any impoundments and all islands therein, from the point where the stream enters the area downstream to the point where the stream leaves the area.

12-5-442.

(a) The General Assembly finds that adequate supplies of clean water for drinking and other purposes constitute the lifeblood of the great metropolitan areas of this state and are, therefore, essential to the health, welfare and economic progress of the state; that development adjacent to major streams in certain metropolitan areas requires special regulation to provide adequate protection for public water supplies; that siltation and urban runoff threaten such water supplies; that flood plain development unnecessarily exposes life and property to loss by flooding while increasing flood risks for other areas; that over-intensive development adjacent to major streams increases the frequency and severity of such flooding; that it is in the public interest to avoid future flood damage and possible loss of life, to control erosion and pollution, and to protect the water quality of major streams in certain metropolitan areas.

(b) The General Assembly finds that the stream corridors of major streams in certain metropolitan areas as set forth in this part are vital areas within the meaning of Article III, Section VIII, Paragraph IIIA of the Constitution of the State of Georgia of 1976 and Article III, Section VI, Paragraph II of the Constitution of the State of Georgia of 1983. The purpose of this part is to provide a method whereby political subdivisions in certain metropolitan areas shall utilize the police power of the state, in accordance with a comprehensive plan, to protect consistently the water quality of any major stream, the public water supplies of such political subdivision and of the area, recreational values of the major stream, and private property rights of landowners; to prevent activities which contribute to floods and flood damage; to control erosion, siltation, and intensity of development; to provide for the location and design of land uses in such a way as to minimize the adverse impact of development on the major stream and flood plains; and to provide for comprehensive planning for the stream corridor in such areas.

(c) The General Assembly finds that certain political subdivisions in the included area have in force certain flood plain and sediment control ordinances that afford adequate protection for the aforementioned problems. Nothing in this Act shall be construed so as to make those local political subdivision ordinances less stringent than they are now.

(d) The General Assembly intends to authorize and require political subdivisions in any such area to enforce this part so as to protect the watercourse and the adjacent stream corridor. The General Assembly further intends that the state have the authority to enforce this part if the appropriate political subdivisions have failed or refused to do so and if the public interest requires it.

12-5-443. The center shall, consistent with the purposes of this part:

(1) Prepare, adopt, and keep up to date one or more comprehensive, coordinated land and water use plan for the stream corridor. The plan, as prepared and approved by the center, shall set land use criteria for flood and flood damage prevention, erosion and siltation control, water quality protection, and intensity of development in the stream corridor. In preparing, adopting, and updating the plan, the center shall be authorized to account for the varying characteristics of different sections of the stream corridor and set land use sections criteria accordingly. At least eight weeks prior to adoption of a plan for all land brought within the stream corridor on or after July 1, 1998, notice that the property is subject to the 'Metropolitan River Protection Act,' including notice of the process of adoption of the plan to be followed by the center, shall be provided by United States mail to each property owner within the affected portion of the stream corridor as shown by the prior year's property tax records. The failure of any owner to actually receive such notice shall not affect the applicability of the plan to such owner's property or create any cause of action for damages or equitable relief. The plan, as adopted by the center, shall be transmitted to each political subdivision by June 16, 1973. The plan as adopted by the center for any and all land brought within the stream corridor after March 1, 1983, shall be transmitted to each political subdivision and to the director by July 1, 1983. The plan adopted by the center for any and all land brought within the stream corridor on or after July 1, 1998, shall be transmitted to each political subdivision and to the director by October 1, 1998. The center may, after hearing, utilize or adopt an existing plan or plans as the plan called for by this part. The center may from time to time revise the plan or portions thereof, and any such revisions of the plan shall be transmitted promptly after adoption. Prior to the adoption of the plan, or of any substantial portion or any revision of the plan, the center shall hold a public hearing on the proposed plan or portion or revision thereof, in each county in which any land affected by the plan or, in the case of a portion or revision of the plan, in which any land affected by such portion or revision lies. The center shall cause notice of the time and place of each such public hearing to be published once a week for two weeks in one or more newspapers of general circulation in each county in which land to be affected lies. Any such land and water use plan shall be prepared in consultation and with assistance of the county or city governing authority where the land to be affected lies;

(2) Foster and undertake such studies of water and related land resources problems in the stream corridor as are necessary in the preparation or revision of the plan;

(3) Make such rules and regulations as may be necessary to implement the purposes of this part and to administer and implement this part and all rules, regulations, and orders promulgated under this part. A copy of any rules and regulations promulgated pursuant to this paragraph by a center which is also an area planning and development commission created pursuant to Article 4 of Chapter 8 of Title 50 shall be provided to the Georgia Senate Natural Resources Committee and the Georgia House of Representatives Natural Resources and Environment Committee; and

(4) Charge a reasonable fee to each applicant for review of any application for a certificate, which fee shall be sufficient to defray all or any portion of the administrative costs of review of the application by the center and of the cost to the center of monitoring and inspection of compliance with such certificates.

12-5-444.

(a) (1) Pending adoption of the plan by the center, it shall be unlawful for any person to erect, maintain, suffer, or permit any structure, dam, obstruction, deposit, clearing, or excavation in or on the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the center may, prior to the adoption of the plan by the center, issue a letter or written statement signed by the executive director of the center ruling with respect to any proposed land or water use in any political subdivision that none of the above-listed adverse effects will occur as a result of the proposed use. Nothing in this subsection shall apply to a political subdivision that, on June 30, 1973, has in effect a flood plain ordinance and a sediment control ordinance.

(2) Pending adoption of the plan by the center as to any land brought within the stream corridor after March 1, 1983, it shall be unlawful for any person to engage in any land-disturbing activity in or on such land within the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the center may, prior to the adoption of the plan by the center as to any land brought within the stream corridor after March 1, 1983, issue a letter or written statement signed by the executive director of the center, ruling with respect to any proposed land-disturbing activity in or on such land that none of the above-listed adverse effects will occur as a result of the proposed use.

(3) Pending adoption of the plan by the center as to any land brought within the stream corridor on or after July 1, 1998, it shall be unlawful for any person to engage in any land-disturbing activity in or on such land within the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the center may, prior to the adoption of the plan by the center as to any land brought within the stream corridor on or after July 1, 1998, issue a letter or written statement signed by the executive director of the center, ruling with respect to any proposed land-disturbing

activity in or on such land that none of the above-listed adverse effects will occur as a result of the proposed use.

- (b) (1) After adoption by the center of the plan or any portion thereof or any amendment thereto, it shall be unlawful within those areas regulated by the plan or any portion thereof or any amendment thereto for any person to engage in any land-disturbing activity in or on the stream corridor which will be incompatible or inconsistent with the plan or any portion thereof or any amendment thereto. A proposed land or water use shall be deemed to be not in compliance with the plan unless and until the governing authority of the political subdivision issues a certificate for the proposed use pursuant to Code Section 12-5-445.
 - (2) The governing authority shall, before referring the application to the center pursuant to Code Section 12-5-445, require the applicant to furnish such detailed information on the proposed land or water use as the governing authority shall reasonably request and as required by the plan and rules and regulations adopted pursuant to this part.
 - (3) Any land-disturbing activity shall be done strictly in accordance with the certificate issued under this part. Any substantial change or modification of a proposed land-disturbing activity for which a certificate has been issued shall require a new certificate, which must be issued in accordance with the requirements of this part.
 - (4) The governing authority shall adopt ordinances, regulations, or procedures as necessary to assure that any land-disturbing activity is conducted in compliance with the plan and the certificate.
- (c) The governing authority shall give public notice of and shall hold a public hearing before issuing or denying any certificate under this Code Section. Written notice of the public hearing shall be mailed to the applicant and to the owner at least ten days prior to the hearing. The form and procedure for such hearings shall be determined by the governing authority involved, provided that all interested persons shall be afforded adequate notice of such hearings and an opportunity to be present and express their views. The information required under paragraph (2) of subsection (b) of this Code Section shall be filed in final form and be available for public inspection prior to such hearing.
 - (d) The governing authority shall delineate and clearly label the stream corridor on the zoning map and the official map of such governing authority.

12-5-445.

- (a) After receipt of a complete application for a certificate, the governing authority shall transmit to the center a copy of such complete application and all supporting documents.
- (b) (1) If, from the application or from its own investigation, the center finds that there are inconsistencies between the plan and the land-disturbing activity proposed by the application, the center may do any one of the following:

(A) Recommend modification of the application in such manner as to be consistent with the plan;

(B) Make a finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; or

(C) Recommend modification of the application in such manner that the application as so modified, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan.

(2) If the center fails to recommend modification of the application within 60 days from submission of such application to the center and if the governing authority makes a specific finding that the application is consistent with the plan or makes a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan, the governing authority shall be deemed to have complied with this Code Section and may issue the certificate.

(c) In any case where the center has recommended modification of an application, the governing authority may:

(1) Adopt such recommendation, incorporate it as a condition of the certificate and issue a certificate with such conditions, in which case any land-disturbing activity under the certificate must be strictly in accordance with the recommendation so incorporated;

(2) After making specific finding that the application is in compliance with the plan or a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan, override such recommendation by affirmative vote of a two-thirds' majority of the full membership of the governing body; however, such action by the governing authority is not final unless and until the governing authority:

(A) Following the affirmative vote to override, holds a second public hearing on the application and the proposed override of the center's recommendation. After giving public notice and after mailing notice to the applicant, the owner, and to the center at least ten days prior to the hearing;

(B) Gives full consideration to all comments made at the second public hearing;

(C) Obtains from the director a written finding that the application is consistent with the plan or, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; and

(D) Reaffirms the vote to override the center's recommendation by affirmative vote of a two-thirds' majority of the full membership of the governing authority, after again making a specific finding that the application is in compliance with the plan or a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; or

(3) Request reconsideration of such recommendation by the center at a public hearing. If the governing authority fails to take action under either paragraph (1), (2), or (3) of this subsection within 45 days after the submission of the recommendation of the center to the governing authority, the certificate shall not be issued. Where a public hearing is requested under this subsection, such public hearing shall be held by the center within 30 days after receipt of such request. Notice stating the time and place of the public hearing shall be mailed at least ten days prior to the hearing to the governing authority, the applicant, and the owner and public notice shall be given. The center shall make its final determination with respect to such recommendation within 30 days after such public hearing. The request for a public hearing under this subsection may be made by the applicant, the owner, or the governing authority involved.

(d) (1) In making the findings required by subsection (b) or by paragraph (2) of subsection (c) of this Code Section, the center, the governing authority, and the director shall follow the purposes set forth in this part and the goals set forth by the plan, as amended.

(2) Any findings by the director under paragraph (2) of subsection (c) of this Code Section shall be appealable under Chapter 13 of Title 50 known as the "Georgia Administrative Procedure Act" as are final decisions in contested cases.

12-5-446. Reserved.

12-5-447. Every certificate issued by a governing authority and every recommendation of the center, unless the proposed use is not harmful to the water and land resources of the stream corridor, will not significantly impede the natural flow of flood waters, and will not result in significant land erosion, stream bank erosion, siltation, or water pollution, shall comply with the following minimum standards:

(1) No land or water use shall be permitted in the flood plain; and

(2) No land or water use shall be permitted within 150 horizontal feet of the watercourse.

12-5-448. Any person aggrieved by any final determination, cease and desist order, other order, or other final action of the center or a governing authority under this part and who has exhausted any administrative remedies may take an appeal to the superior court of the county in which all or part of the land affected lies. The appeal shall be filed within 30 days from the date of the final determination, cease and desist order, other order, or other final action of the governing authority or committee of such governing authority or of the center. Upon failure to file an appeal within 30 days, the decision of

the governing authority or committee of such governing authority or of the center shall be final. The appeal shall be heard by the judge of the superior court without a jury.

12-5-449. The requirements of this part are in addition to and do not supersede other requirements of law including the zoning and building regulations of the political subdivision involved.

12-5-450. Reserved.

12-5-451. This part shall not apply to the following uses:

- (1) Any land or water use for agriculture or animal husbandry as defined in the ordinances adopted by the governing authority, provided that a buffer of natural vegetation is maintained for a distance of 50 horizontal feet from the bank of the watercourse;
- (2) Ordinary maintenance and landscaping operations, except for a distance of 50 horizontal feet from the bank of the watercourse and except for the removal of healthy trees over two inches diameter breast height (DBH) anywhere in the stream corridor;
- (3) Any land or water use or project which, on March 16, 1973, is approved, pending, or is completed, actually under construction, or which is zoned for such use and where expenditures in excess of \$2,500.00 have been made in preparation for construction in accordance with such zoning; provided, however, that the construction of the project is actually commenced within 36 months of March 16, 1973; otherwise, a certificate for the project must be obtained pursuant to this part;
- (4) (A) With regard to any land included in the stream corridor for the first time after March 1, 1983, any land or water use or land-disturbing activity:
 - (i) Which, on March 1, 1983, is completed, under construction, fully approved by the governing authority, or for which all requests for approval of construction are pending before the governing authority; or
 - (ii) Which is to be located on land which, on March 1, 1983, is zoned for such use and where expenditures in excess of \$2,500.00 have been made in preparation for construction in accordance with such zoning; however, prior to March 1, 1984, construction of such land-disturbing activity must have actually commenced and expenditures must have been made in connection with such construction in excess of 10 percent of the estimated cost of the total projected land-disturbing activity, exclusive of the cost of the land, or in excess of \$100,000.00, exclusive of the cost of the land, whichever is less; otherwise a certificate for the project must be obtained pursuant to this part.

(B) Upon request by the owner of any land included in the stream corridor for the first time after March 1, 1983, the center shall make a determination whether any land or water use or land-disturbing activity on such land satisfies the conditions set forth in this subsection for exclusion from application of this part. Any such request shall be accompanied by any information concerning the land or water use or land-disturbing activity as the center may reasonably request. If the center determines that the land or water use or land-disturbing activity fails to satisfy the conditions set forth in this subsection, the center shall state the reasons therefor. The center shall be authorized to delegate this authority to its executive director. If such delegation is made, any person aggrieved by any such determination of the executive director may appeal such determination to the center within 30 days of the issuance of such determination.

(5) (A) With regard to any land included in the stream corridor for the first time on or after July 1, 1998, any land or water use or land-disturbing activity:

(i) Which on July 1, 1998, is completed, under construction, fully approved by the governing authority, or for which all requests for approval of construction are pending before the governing authority; or

(ii) Which is to be located on land which, on July 1, 1998, is zoned for such use and where expenditures in excess of \$5,000.00 have been made in preparation for construction in accordance with such zoning; provided, however, that prior to July 1, 1999, construction of such land-disturbing activity must have actually commence and expenditures must have been made in connection with such construction in excess of 10 percent of the estimated cost of the total projected land-disturbing activity, exclusive of the cost of the land, or in excess of \$100,000.00, exclusive of the cost of the land, whichever is less; otherwise a certificate for the project must be obtained pursuant to this part.

(B) Upon request by the owner of any land included in the stream corridor for the first time on or after July 1, 1998, the center shall make a determination whether any land or water use or land-disturbing activity on such land satisfies the conditions set forth in this paragraph for exclusion from application of this part. Any such request shall be accompanied by any information concerning the land or water use or land-disturbing activity as the center may reasonably request. If the center determines that the land of water use or land-disturbing activity fails to satisfy the conditions set forth in this paragraph, the center shall state the reasons therefor. The center shall be authorized to delegate this authority to its director. If such delegation is made, any person aggrieved by any such determination of the director may appeal such determination to the center within 30 days of the issuance of such determination; or

(6) Any land or water use or land-disturbing activity which is undertaken or financed, in whole or in part, by the Department of Transportation of the State of Georgia.

12-5-452.

(a) If a governing authority determines that any person is violating any provision of this part, any rule or regulation adopted pursuant to this part, or the terms and conditions of any certificate issued under this part, the appropriate governing authority shall employ any one or any combination of any or all of the following enforcement methods:

(1) The appropriate governing authority may issue a cease and desist order specifying the provision of this part or the rule or the term or condition of a certificate violated and requiring the person so ordered to cease and desist from such activity and to take corrective action within a reasonable period of time as prescribed in the order. Such corrective action may include, but shall not be limited to, requiring that the affected portion of the stream corridor be returned to its condition prior to the violation insofar as practical. Any such order shall become final unless the person named therein requests in writing a hearing before the governing authority no later than 30 days after the issuance of such order. On the basis of such hearing, the governing authority shall be authorized to continue such order in effect, to revoke the order, or to modify it;

(2) Whenever the appropriate governing authority finds that an emergency exists requiring immediate action to protect the watercourse and the public interest, the governing authority may issue an emergency cease and desist order, effective immediately, reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Any person against whom such order is directed shall comply therewith immediately but, on application to the governing authority, shall be afforded a hearing within five business days. On the basis of such hearing the governing authority shall be authorized to continue such order in effect, to revoke the order, or to modify it;

(3) The appropriate governing authority may seek injunctive relief pursuant to subsection (b) of this Code Section; or

(4) The governing authority shall be authorized to delegate to a responsible official thereof the authority to issue the orders set forth in this subsection.

(b) Any land-disturbing activity in violation of this part, any rule or regulation adopted pursuant to this part, or any certificate issued pursuant to this part shall be a public nuisance; and the creation and maintenance thereof may be enjoined and abated upon an action being filed by the center, any political subdivision affected, the director, or any person.

(c) Any person who violates this part of any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final cease and desist order or emergency order issued pursuant to this part may be fined a civil penalty not to exceed \$1,000.00 for each acre or part thereof on which such violation occurs. Each day on which such violation exists is a separate offense.

(d) The superior court having jurisdiction over an action brought pursuant to this Code Section shall have the authority to require that the land within the stream corridor be restored to its original condition prior to the unauthorized land-disturbing activity, if possible and if environmentally appropriate. If such restoration is ordered by the court and not carried out within the time limits set forth in a final court order, the governing authority shall be authorized to carry out total or partial restoration within the stream corridor, and the person or persons responsible for the unauthorized land-disturbing activities shall be liable for the amount expended upon restoration. Such amount shall be recoverable by the governing authority in an action against such person or persons.

12-5-453.

(a) On or before January 1, 1984, or March 1, 1999, with respect to land brought within the stream corridor on July 1, 1998, each governing authority shall adopt ordinances or regulations governing use of all land which is in the drainage basin of any tributary. Such regulations and ordinances shall, at a minimum, include the following:

(1) Buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any tributary, in which areas there will be no land-disturbing activity; and

(2) Soil erosion and sediment control regulations consistent with Chapter 7 of this title, 'Erosion and Sedimentation Act of 1975'. Requirements of the plan, other than those requirements consistent with Chapter 7 of this title, shall not apply in the drainage basin of any tributary outside the stream corridor.

(b) If the governing authority has failed to adopt and enforce buffer area and erosion and sediment control ordinances or regulations which effectively control erosion and sedimentation in a tributary, the center shall give written notice to the governing authority of its intent to request the director to undertake enforcement of erosion and sediment control regulations in the drainage basin of such tributary. If, after such notice from the center, the governing authority fails to demonstrate, to the satisfaction of the center, its intent and ability to enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of such tributary, the center shall request the director to assume enforcement of erosion and sediment control regulations in the drainage basin of such tributary.

(c) Upon notification by the center of a governing authority's failure to adopt and enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of a tributary or upon a determination by the director, after consultation with the center, that a governing authority has failed to adopt and enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of a tributary, the director may revoke the certification of a governing authority as an issuing authority for permits required by the 'Erosion and Sedimentation Act of 1975,' for the land within the drainage basin of such tributary.

12-5-454. Notwithstanding any other provisions of this part to the contrary, nothing contained in this part shall be construed so as to prohibit any person, firm, or corporation from removing sand from any watercourse without restriction when such removal is accomplished in such a manner that no greater effluent is returned to the watercourse than that removed therefrom and no erosion along the banks of the watercourse occurs.

12-5-455. The plan, every proposed version thereof, every revision thereof, and every application for a certificate under this part shall constitute public documents and shall be freely available for inspection by any person.

12-5-456.

(a) If the center has reason to believe that any person is carrying out any land-disturbing activity in or on the stream corridor without a certificate pursuant to this part, in violation of the terms and conditions of a certificate issued pursuant to this part, or in any other respect in violation of this part, the center shall notify the governing authority of the political subdivision in which such illegal activity is taking place and shall recommend action to correct the situation. A copy of such notice to the governing authority shall be furnished to the director. If the center has determined that the violation requires immediate enforcement action, the notice to the governing authority shall so state.

(b) If, after notice from the center, pursuant to subsection (a) of this Code Section, of a violation which requires immediate enforcement action, a governing authority has failed to initiate an enforcement action or otherwise secure cessation of the violation within three business days of receipt of such notice, the center shall so advise the director.

(c) Upon notice from the center pursuant to subsection (b) of this Code Section of a violation of this part which requires immediate enforcement action and as to which the governing authority has failed to initiate enforcement action or otherwise secure cessation of the violation or upon a determination by the director, after consultation with the center, that any person is violating any provision of this part, any rule or regulation adopted pursuant to this part, or the terms and conditions of any certificate issued pursuant to this part and that the public interest requires that the state take immediate action, the director shall have the authority to employ any one or any combination of any or all of the following enforcement methods:

(1) The director may issue a cease and desist order specifying the provision of this part or the rule or the term or condition of a certificate violated and requiring the person so ordered to cease and desist from such activity and to take corrective action within a reasonable period of time as prescribed in the order. Such corrective action may include, but shall not be limited to, requiring that the affected portion of the stream corridor be returned to its condition prior to the violation, insofar as practical. Any such order shall become final unless the person named therein requests in writing a hearing before a hearing officer appointed by the board no later than 30 days after the issuance of such order. Review of such order shall be available as provided in subsection (d) of this Code Section;

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the watercourse and the public interest, the director may issue an emergency cease and desist order, effective immediately, reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Any person against whom such order is directed shall comply therewith immediately but, on application to the director, shall be afforded a hearing within five business days. On the basis of such hearing, the director shall be authorized to continue such order in effect, to revoke the order, or to modify it. Review of such order shall be available pursuant to subsection (d) of this Code Section;

(3) The director may seek injunctive relief pursuant to subsection (b) of Code Section 12-5-452;

(4) Any person who engages in any land-disturbing activity in violation of this part, any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final or emergency order of the director shall be subject to a civil penalty not to exceed \$1,000.00 for each acre or part thereof on which such violation occurs. Each day on which such violation exists is a separate offense. Whenever the director has reason to believe that any person has violated this part, any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any order or emergency order issued pursuant to this part, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this part, any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final cease and desist order or emergency order issued pursuant thereto, the hearing officer shall issue his decision imposing civil penalties as provided in this Code Section; or

(5) In administrative proceedings or in judicial proceedings, the director may seek, among other relief, the restoration of the affected portion of the stream corridor to its original condition prior to the unauthorized land-disturbing activity, if possible and if environmentally appropriate. If such restoration is ordered by a final order of the Board of Natural Resources or of the superior court and not carried out within the time limit set forth in the final administrative order or final court order, the director shall be authorized to carry out such restoration, and the person responsible for the unauthorized land-disturbing activities shall be liable for the amount expended upon restoration. Such amount shall be recoverable by the director in an action against such person.

(d) All hearings on and review of contested matters, orders, or other enforcement actions initiated by the director under this part shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure of this Code Section shall be to the exclusion of all other means of hearings or review.

(e) If, pursuant to this Code Section, the director determines that the public interest requires initiation of an enforcement action by the director and if the director, after initiation of such enforcement action, secures cessation of the unauthorized activity or achieves the imposition of a civil penalty and the restoration of the land or is otherwise successful in correcting or penalizing the violation of this part, whether by formal legal action or by settlement, the

governing authority within whose jurisdiction such violation occurred shall be liable to the state for the costs incurred by the state in such enforcement action, including the reasonable cost of attorneys' services.

12-5-457. No provision of this part shall repeal, supersede, or preempt any function, power, authority, duty, or responsibility assigned to the Environmental Protection Division of the Department of Natural Resources by any other provision of this Code.

In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses or phrases of this Act, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

All laws and parts of laws in conflict with this Act are hereby repealed.