

Text of Ruling

May 26, 1981

Neal D. Madden, Esq.
700 Midtown Tower
Rochester, New York 14604

Re: Declaratory Ruling - Webster Associates

Dear Mr. Madden:

You requested a Declaratory Ruling of this Department that would require Webster Associates to make application for a permit pursuant to Environmental Conservation Law (ECL) Section 15-0503 (implementing Regulation 6NYCRR 608.3). The matter involves certain drainage improvements in connection with construction of a regional mall to be located on a site in the Town of Webster, Monroe County.

Your petition indicates that the Developer proposes the relocation of one tributary of Mill Creek, and the enlargement of a stream channel to create a retention-detention pond. It is your contention that the foregoing activity requires a permit pursuant to the above mentioned section of the Environmental Conservation Law.

The Department staff has reviewed the site plan for the project and in particular the construction of the on-site retention-detention pond and the work proposed in relocating the one tributary.

Relative to your concern, the plans submitted for review indicate the following:

1. The enlargement of a tributary in a Class D stream to create a retention-detention pond. The work proposed involves the excavation of a dugout storage pond to serve as a sediment basin and water storage facility.
2. The relocation of another tributary in a Class D stream and the rerouting of that tributary around the perimeter of the site into the above retention and detention facility. The prior stream channel will then be filled in.

It has long been the position of the Department that an excavation of the type involved in paragraph number 1 above does not require a permit. There will be no construction of an impoundment structure, dam structure, or other artificial

structure, earthen or otherwise, in or across the tributary, which will impeded the flow of water within the meaning of ECL Section 15-0503.

The work involved in diverting the tributary proposed in paragraph number 2 does not involve any type of impoundment and would not require a permit under ECL Section 15-0503.

Since the tributaries involved are classified as Class D, no permit under ECL Section 15-0501 would be required.

Richard A. Persico
General Counsel/Deputy Commissioner