

## PERMIT CONDITIONS

### I. Authority Under the Inland Wetlands and Watercourses Act (IWWA)

#### A. *Section 22a-42a(d)(1) Establishment of boundaries by regulation. Adoption of regulations. Permits. Filing fee.*

In granting a permit the municipal inland wetlands agency, or its agent, may grant the application as filed or grant it subject to terms, conditions, limitations or modifications of the regulated activity that are designed to carry out the policy of the IWWA.

Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would:

1. prevent or minimize pollution or other environmental damage;
2. maintain or enhance existing environmental quality; or
3. in the following order of priority: restore, enhance and create productive wetland or watercourse resources.

#### B. *Section 22a-41(a)(4) Factors for consideration...*

In carrying out the purposes and policies of the IWWA..., the municipal inland wetlands agency shall take into consideration all relevant facts and circumstances, including but not limited to...:

(4) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, *and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to:*

1. prevent or minimize pollution or other environmental damage,
2. maintain or enhance existing environmental quality, or
3. in the following order of priority: restore, enhance and create productive wetland or watercourse resources.

## II. General Permit Conditions

### A. DEP Inland Wetlands and Watercourses Model Regulations

General administrative conditions are provided in DEP's model regulations, Section 11.9. It is recommended that these general conditions be repeated in each permit. At a minimum, these general conditions should be referenced in the municipal inland wetlands regulations. The general administrative conditions are as follows:

1. The Agency has relied in whole or in part on information provided by the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.

*Comment: This condition informs the applicant that if a permit was issued based on false, deceptive, incomplete or inaccurate information it may be modified, suspended or revoked by the municipal inland wetlands agency.*

2. All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of \_\_\_\_\_, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the subject land or activity.

*Comment: This condition includes recognition that the issuance of an inland wetlands permit does not derogate any present or future rights or powers of the municipal inland wetlands agency or the Town nor does it serve to convey any rights in real estate. This condition also provides notice to applicants that the issuance of an inland wetlands permit does not relieve them of the need to comply with other applicable federal, state and/or local laws and regulations.*

3. If the activity authorized by the Agency's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under sections 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.

*Comment: This condition provides for coordination with the Planning and Zoning Commission to allow for all necessary permits to be issued before work begins.*

4. In constructing the authorized activities, the permittee shall implement such management practices consistent with the terms and conditions of the permit as needed to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

*Comment:* This condition emphasizes that soil erosion and sediment controls are typically an essential component of the work. It is important to note these controls on the site plan and to reference the final site plan in the permit.

5. Permits are not transferable without the prior written consent of the Agency.

*Comment:* This condition enables the municipal inland wetlands agency to effectively administer and enforce the permit. It is recommended that prior written notification to the municipal inland wetlands agency contain the name and address of the party to which the permit is being transferred.

### III. Specific Permit Conditions

#### A. Appropriate Permit Conditions

A proper permit condition: (i) relates directly to the impact of the proposed regulated activity on the protected resource (wetlands and watercourses) over which the municipal inland wetlands agency has authority and (ii) requires the applicant to take specific actions to ensure the regulated activity complies with applicable law. For example:

1. Conditions that relate to seasonal restrictions. For example, "Unconfined in-stream activity must be conducted during the low flow period between June 1<sup>st</sup> and September 30<sup>th</sup>."
2. Conditions that relate to soil erosion and sedimentation controls. For example, "The project must abide by the soil erosion and sedimentation controls as depicted on site plan "A" revised 1/1/11".

The permit condition imposed must also be authorized by the municipality's own inland wetlands regulations.

#### B. Inappropriate Permit Conditions

1. Conditions that do not relate directly to the resource to be protected: wetlands and watercourses identified in the application to conduct regulated activities. The municipal inland wetlands agency has authority over activities that may affect wetlands and watercourses.
  - a) For example, voluntarily offered conditions such as the payment of a sum of money to conduct "watershed studies," or money to capitalize a fund out of which to pay for damage to the property (off-site) of third parties, do not relate to the specific site and the nature of the mitigation proposed is unauthorized by the IWWA.

- b) Further, conditions that allow for the funding of an *unspecified* future mitigation project, not subject to meaningful review of the adequacy of the mitigation plan, are likewise inappropriate.
  - c) Such conditions are improperly “disassociated” from the applicant’s responsibility to avoid or lessen adverse impacts to the regulated resources resulting from the proposed activities.
2. Conditions that purport to extract rights and/or properties such as easements, donations, and prohibitions without the applicant's consent.
  3. Conditions that alter the effective life of a permit as established by the IWWA Section 22a-42a(d)(2).
    - a) For example, a permit condition governing long-term, post-construction maintenance activities that outlive the period of authorization under the permit.
  4. Conditions that require the future submission and/or review of technical information, which deferred submission/review deprives the municipal agency of making the required determination that the proposed activity complies with applicable wetlands laws and regulations.
  5. Conditions that attempt to complete an incomplete application.
  6. Conditions that seek to regulate exempt or otherwise nonregulated operations and uses.

*\*\* Note that an invalid permit condition, when deemed integral to and inseverable from the permit issued by a local commission (i.e., when the commission would have refused to grant the wetlands permit without the challenged condition), may invalidate the entire permit.*

### **C. Permit Conditions That Should Only Be Used With Caution**

Conditions that are used for enforcement purposes, or in lieu of an order. The enforcement condition may not be completed if the applicant does not conduct the regulated activity (“use” the permit) or if the permit expires. Permits give permission to conduct activities within a specified period of time, after which they expire.