



STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY

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February 26, 2023

Re: Committee Bill 5616 - An Act Improving Standards for Inland Wetland  
Commission Authority Membership and Enforcement

Honored Co-Chairs Sen. Lopes and Rep. Gresko, Vice Chairs Sen. Hochadel and Rep. Palm, Ranking Members Sen. Harding and Rep. Callahan, Distinguished Members of the Environment Committee,

The Council on Environmental Quality (Council) is a nine-member board that works independently of the Department of Energy and Environmental Protection (DEEP) to assess the condition of Connecticut's environment and report its findings annually to the Governor; recommend actions to improve state environmental programs; advise other state agencies on the environmental impacts of proposed projects; and investigate citizens' complaints and allegations of violations of environmental laws. In 2008, the Council published a special report, *Swamped*,<sup>1</sup> that evaluated the strengths and weaknesses of the current approach to the regulation of wetlands and watercourses and recommended steps to improve inland wetlands conservation.

The Council **supports** certain provisions of Committee Bill 5616 that would strengthen inland wetland and watercourse protections. Specifically, the Council supports the provision that would require each member of the inland wetlands agency and staff of the agency to complete DEEP's comprehensive training program. The Council also supports the provision that would allow municipal inland wetlands agencies the discretion to deny or condition an application for a regulated activity on the basis of a potential impact or effect on aquatic, plant, or animal life or habitat. The Council notes that the proposed revisions to Section 22a-41(b) are not well defined and could lead to confusion. The Council suggests that the recommendations identified in the 2008 special report, *Swamped*, regarding training, reporting, DEEP oversight and enforcement, and the need for independent commissions be considered in the proposed legislation.

Thank you for consideration of these comments.

Sincerely,

Paul Aresta,  
Executive Director

<sup>1</sup> Council on Environmental Quality, see attached report; <https://portal.ct.gov/-/media/CEQ/SWAMPEDwithlinkspdf.pdf>

# Swampy



Photo credit: Janet Novak

## ***Cities, Towns, the Connecticut DEP and the Conservation of Inland Wetlands***



A Special Report of the Connecticut Council on Environmental Quality

October 1, 2008

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# SWAMPED

## *Cities, Towns, the Connecticut DEP and the Conservation of Inland Wetlands*

For nearly forty years Connecticut's cities and towns have been charged by **state law** to protect inland wetlands by regulating human activity in and around them. Success depends on an effective partnership between the state and municipalities. Municipalities have full authority over almost all wetlands decisions (4,500 per year) and have numerous statutory duties related to training and reporting. The Department of Environmental Protection (DEP) has duties under the law to provide training and oversight to the municipal agencies, and has been attempting to fulfill its state-wide role with just two staff persons (recently raised to three). This report evaluates the strengths and weaknesses of the current approach and recommends steps to improve inland wetlands conservation.

### SUMMARY OF CONCLUSIONS

#### THE DEP'S SERVICE TO CITIES AND TOWNS: TRAINING

**The Department of Environmental Protection's training program for local wetlands officials is highly effective but has not achieved its full potential.**

The DEP is required to offer a comprehensive training program to members and staff of municipal wetlands agencies. Municipalities are required to have at least one member or staff person complete the training program. The Council found that

- Municipalities that comply with the training requirement are more protective of wetlands.
- As many as 30 municipalities do not comply with the statutory requirement to have at least one member or staff person complete the training.
- The wetlands training program is highly regarded. The only complaint from municipalities is that the training sessions are not frequent or convenient enough.
- The DEP has made modest efforts to provide training through electronic video formats, as required by statute. Its first DVD was award-winning, but its efforts are constrained by inadequate and irregular funds. The first DVD was funded by a one-time grant, and the second DVD is being produced only after funds were made available from an enforcement settlement in another program.

## HOW THE DEP KNOWS WHAT'S GOING ON: REPORTING

**Many municipalities – usually 25 or more each year – fail to report their wetlands decisions to the DEP despite the statutory requirement to do so.**

The data provided by the cities and towns are the only means by which the effectiveness of the **Inland Wetlands and Watercourses Act (IWWA)** can be judged. The Council found that

- Most of the chronic non-reporters are small towns, and their reasons for not reporting vary from lack of time to confusion to resentment of the DEP.
- Chronic non-reporters do not differ greatly from the reporting towns in their effectiveness in conserving wetlands.
- The DEP could obtain higher compliance with the reporting requirement by improving and modernizing the reporting process through use of the internet, but is constrained by funding. The current process is archaic and inefficient: local commissions submit paper forms to the DEP, which enters the data into an electronic data base. Usually the data are not analyzed for several years and, when they are, the analysis is deficient because of the non-reporters.

## THREE COACHES FOR 1,500 PLAYERS: DEP OVERSIGHT

**The DEP is not equipped with staff or finances to fully support and oversee municipal implementation of the IWWA.** The DEP oversees, monitors, trains and supports 170\* municipal wetlands agencies, comprising an estimated 1,500 members and alternates, with a staff of three. These employees have additional obligations including analysis of all judicial appeals (100 to 200 per year) and potential involvement therein. The DEP must decide where to concentrate its limited staff time. To date, the DEP has focused on training of municipal officials, and Council research confirms the wisdom of that choice. However, the DEP must forego other essential tasks and responsibilities, including

- monitoring the effectiveness of individual municipalities' actions and analyzing the differences among their performances,
- providing technical assistance to town wetland agencies for complex applications,

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\* While the number of municipalities in Connecticut is generally given as 169, there are in fact 170 municipal inland wetlands agencies because the Town of Groton and the City of Groton have separate wetlands agencies.

- taking enforcement action where a municipality fails to act, and
- auditing the value, if any, of reported wetlands “enhancement” actions.

In the 1990s the DEP had five employees to work on inland wetlands, and it was able to provide technical assistance to cities and towns on complex applications. Now, with such assistance no longer available, municipal wetlands agencies are encouraged by the DEP to raise their application fees to a level sufficient to cover the local agencies’ costs of hiring consultants to review the applications. To the extent that municipalities are reluctant to charge their residents such high fees, wetlands and watercourses will suffer more impacts.

## **ZONING AND WETLANDS TOGETHER: NOT IDEAL**

**Municipalities that have combined wetlands/zoning commissions are less protective of wetlands, on average, than municipalities with separate commissions.** The Council compared the wetlands disturbances permitted by the nine combined wetlands/zoning commissions against the statewide averages for 2004 and 2005, and found that the average permit issued by a combined commission resulted in greater wetlands disturbance.

### **THE CASE OF THE DISAPPEARING POND**

The Council started its review of the DEP’s inland wetlands enforcement capabilities in 2005 following a citizen’s complaint about an apparent unpermitted destruction of a pond and wetland. The area appeared as a sizable pond and swamp on maps and aerial photographs for many years, but was found by the citizen to contain only truckloads of fill in 2003. The town took no enforcement action, which opened the door for the Council to refer the allegation to the DEP for direct enforcement action. However, the DEP declined to enforce the law, in part because it did not have staff to conduct a field investigation. The DEP wrote a series of letters to the town, asking questions and making recommendations, a process that took more than two years. All of the recommendations pertained to procedural improvements for the future, not the wetland that disappeared.

From this case, the Council learned that the DEP must deal with potential enforcement cases sequentially, and from other cases the Council learned that some cases never get investigated at all.

## SUMMARY OF RECOMMENDATIONS

### TRAINING

Training and related matters consume almost all of the DEP inland wetlands staff's time; the DEP should continue this emphasis, as it is the most productive use of its limited inland wetlands staff.

The DEP should make training more convenient for municipal wetlands agency members.

- The DEP should have up-to-date knowledge of which municipalities have trained members and staff and which ones do not. The municipal activity reporting form should include a box with the name of the trained commission member or staff so the DEP can more easily note and respond to any municipalities that do not have trained members or staff.
- At every public hearing, municipal wetlands agencies should be required by statute to state whether or not they are in compliance with the current legal requirement to have at least one trained member or staff person.
- The DEP should award a municipality, upon application, special certification if the majority of the members complete the DEP's wetlands training program
- The General Assembly should appropriate the funds necessary to develop required video training materials (DVDs and on-line). A video-based course with a workbook or an on-line training course should be created as a substitute for some classroom portions of the training program. The DEP is moving slowly toward this goal but to date has had to rely on one-time grants and settlements from unrelated enforcement cases to fund these efforts.

### REPORTING

- The DEP should create a simple system for towns and cities to submit their required wetlands activity forms electronically. The DEP should consult with municipalities so the system meets their needs as well as the DEP's own needs for secure reliable data. An electronic system could include automatic reminders to tardy towns, avoiding the time and expense of the physical mailings common under the current system.
- The General Assembly should appropriate the necessary funds to the DEP for creating the on-line reporting system.
- The DEP's wetlands training program should include more information on reporting and how the data are used, so all municipalities see the benefit of submitting the required reports.

## **DEP OVERSIGHT AND ENFORCEMENT**

- The DEP should analyze submitted data continuously to identify municipalities that are permitting more wetland disturbance with each decision than the average municipality. The DEP should then work with those towns to identify the reasons for the permitted disturbances as well as possible need for additional training or other assistance.
- The General Assembly should appropriate funds for at least two more staff positions to allow the DEP to fulfill its statewide oversight and enforcement obligations. The DEP should have staff, separate from the training staff, to investigate potential problems that individual municipalities might be having in implementing the IWWA, and for investigating alleged wetlands violations in cases where a municipality fails to act.

## **INDEPENDENT COMMISSIONS**

- The General Assembly should require municipalities to have inland wetlands agencies that are separate from zoning commissions. Such legislation could establish a deadline in the future that would give the nine affected municipalities time to prepare, and could also allow for exceptions based on measured performance, infrequency of wetlands decisions (such as in the major cities), or other variables.

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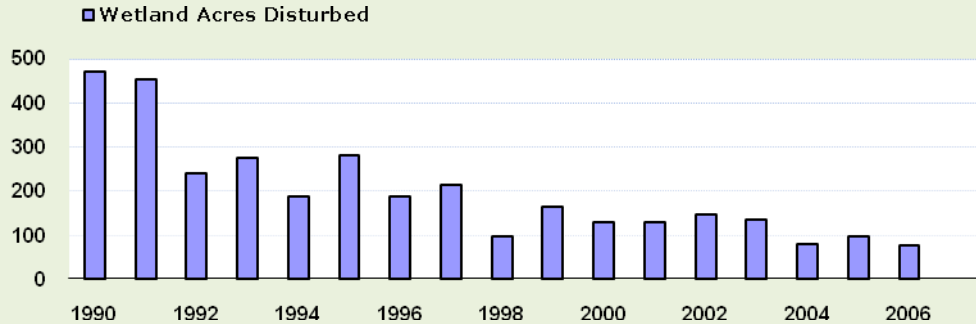
Most of the survey data and statistical analyses of permit data used in this report have been assembled into a separate document, available on the Council's website at <http://www.ct.gov/ceq/WetlandsData>

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## INTRODUCTION

Connecticut has succeeded in reducing the rate of wetlands legally disturbed by development:



Source: CEQ analysis of data reported by municipalities to the DEP; the CEQ adjusts the raw data to include an estimate of permits granted by non-reporting towns.

When the DEP found its inland wetlands staff reduced to two persons from five in recent years, it elected to aim its remaining staff resources at the training of municipal wetlands officials. This decision was the correct one, according to the Council's statistical analysis. However, several questions remained: why do some municipalities do a better job than others, for example, and why doesn't the DEP know what goes on in some towns?

The Council attempted to answer these and other questions through a series of interviews, quantitative analyses, and surveys. The research included determining the extent to which wetlands regulation and conservation were influenced by variables that had been previously unmeasured. This report is the result of those inquiries. The results are discussed as answers to four specific questions:

1. Does the DEP training program for municipal inland wetlands officials have an effect on wetlands?
2. Why do many municipalities fail to submit mandatory wetlands reports to the DEP, and does it matter?
3. Does the DEP fulfill its statutory responsibility to "exercise general supervision of the administration and enforcement" of the IWWA?
4. Does the combining of Zoning and Inland Wetlands authority into a single municipal commission have an effect on wetlands destruction?

## KEY PROVISIONS OF CONNECTICUT'S INLAND WETLANDS AND WATER-COURSES ACT:

Authority for inland wetlands regulation lies in [Sections 22a-36 through 22a-45a](#) of the Connecticut General Statutes. The basic elements include:

- **The finding that wetland preservation is in the public interest and is essential to the "health, welfare, and safety of the citizens of the state."**
- **A definition of wetlands that is based entirely on soil type:** "land, including submerged land...which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain".
- **The requirement to be administered at the municipal level by local Inland Wetlands and Watercourses Agencies.** There are 170 such agencies. The wetlands agency is combined with the zoning commission in nine towns and with the conservation commission in more than 40. Basic procedures and criteria for decision-making are spelled out.
- **The requirement for the DEP to offer comprehensive training to staff and agency members of the municipal wetlands agencies.** Each local agency is required to have at least one member or staff person who has completed the training. This training is free to one member from each town each year. Each inland wetlands agency must hold a meeting annually at which information is presented to members of the agency that summarizes the training program for that year.
- **The requirement for local wetlands agencies to report all decisions to the DEP, and to submit copies of changes to regulations (once approved at the local level).** The DEP has no authority to overrule or void any local decision or regulation. All appeals of local decisions go directly to the Superior Court, where the DEP may, and occasionally does, participate as a party with the assistance of the Attorney General.
- **Penalties for anyone who disturbs a wetland (or surrounding review area, if the local regulations provide for one) without a statutory right or a permit from the local wetlands agency.** Enforcement is conducted at the local level, but the DEP can step in if the municipality fails to act.

**A note about federal jurisdiction:** The Council has encountered many people, including municipal officials, who expressed some confusion about the relationship of Connecticut's wetlands laws to federal law. There is essentially no relationship. Pursuant to the federal Clean Water Act, the U.S. Army Corps of Engineers regulates activity in some wetlands, which are defined differently. A resident who needs to obtain a local inland wetlands permit might also need to obtain a federal permit, but the definitions, jurisdictions, and application procedures are entirely separate. Connecticut's state law does not depend on or flow from the federal law.

## TRAINING

**Question 1: Does the DEP training program for municipal inland wetlands officials have an effect on wetlands?**

**Answer: Yes.**

**On average, an inland wetlands permit issued by a municipal commission that has at least one trained member or staff person will result in less wetlands disturbance or destruction.**

### HOW WE KNOW

Municipal wetlands commissions are required by state law to have at least one member or staff person who has completed the DEP's comprehensive wetlands training program (CGS Section 22a-42(d)). Many cities and towns do not comply with this requirement (see below). Though regrettable, this non-compliance allowed the Council to compare permits issued by trained commissions against those issued by untrained ones. Using archived Activity Reporting Forms stored by the DEP, a random sample of more than 400 reports were examined for the years 2001 through 2005. Reports were classified as "trained" or "untrained" according to whether or not an official of the town had completed the training program, and a statistical analysis was performed to determine if training was a significant variable in the amount of wetlands disturbed per permit.

The analysis showed that, on average, the presence of a trained commissioner or staff member is associated with the alteration of .036 fewer wetland acres for each permit granted. In other words, if 100 permits were approved to alter wetlands by a trained local agency as opposed to an untrained agency, the disturbance of 3.6 acres of wetland would be avoided. In 19 out of 20 cases (i.e. the 95% confidence interval), a trained local agency will prevent the alteration of .011 to .061 acres of wetland when compared to each similar case handled by an untrained



### "Telly"

Founded in 1979, the Telly Awards is the premier award honoring outstanding local, regional, and cable TV commercials and programs, as well as the finest video and film productions.

**The Connecticut DEP in partnership with Middlesex Community College won a bronze "Telly" award in a national competition in 2006 for the interactive training DVD, "The Connecticut Inland Wetlands and Watercourses Act"**

This introductory DVD was created to help prepare new local wetlands agency members and staff prior to attending the training sessions and to inform such local officials who take office after the training sessions for that year have been completed.

The DEP is required by statute to "provide for distribution of video presentations" on inland wetlands regulation (CGS Section 22a-42(d)). The potential for interactive video training is enormous, but the DEP cannot produce these without funds. The first (see above) was produced with a one-time grant, and the second, now in production, depended on a settlement in connection with a violation in another DEP program. At this rate, innovations such as online training and examination are many years away.

agency. From this analysis, the Council estimates that the DEP's training program has resulted in the conservation of more than 130 acres of wetlands since 2001.

There is no way for an applicant appearing before an inland wetlands agency to know whether any of the agency members hearing the application are trained.

The Council's study included detailed interviews with several municipal commission and staff members who had completed the training program. Most of these people offered subjective but compelling reasons for the difference in performance before and after training. After completing the training program, they reported a greater understanding of the law and their own responsibilities.

To further evaluate the program, a Council member attended the training program and concurred with other trainees on its usefulness. Other Council members had participated in the training in earlier years.

With this statistical and personal endorsement of the DEP's training program, the Council turned its focus toward how more towns can be brought into compliance with the training requirement.

#### More About Municipal Participation in the DEP's Training Program

During the years 2000 through 2006, 37 municipalities (about 22%) did not have an agency member or staff person complete the DEP's training program. This is not the exact number of untrained towns, however. State records are not entirely clear. Trained staff members (and to a much lesser extent, agency members) commonly move from town to town, bringing "trained" status to the new town and possibly leaving the vacated town "untrained." The DEP has no method for capturing this information. Also, some of those 37 municipalities might still have someone on the agency (or staff) who completed the training in 1997 through 1999; those should still be considered "trained" towns.

State law does not require each town to send a participant to training each year, but it certainly suggests and anticipates that each will. The DEP is required by statute to provide a free seat to each city and town annually. The same law requires that each local wetlands agency have a meeting annually to present information to the members "which summarizes the provisions of the training program." These annual sessions, if held, cannot be meaningful if members rely on training from a decade ago. Some towns are assiduous about sending one or more participants each year, but clearly many are not.

More information about the content and locations of the DEP's comprehensive inland wetlands training program can be found on its website at [http://www.ct.gov/dep/cwp/view.asp?a=2720&q=325686&depNav\\_GID=1654](http://www.ct.gov/dep/cwp/view.asp?a=2720&q=325686&depNav_GID=1654)

## RECOMMENDATIONS FOR TRAINING

Training and related matters consume almost all of the DEP inland wetlands staff's time; the DEP should continue this emphasis, as it is the most productive use of its limited inland wetlands staff.

The DEP should make training more convenient for municipal wetlands agency members.

- The DEP should collect and keep records of which municipalities have trained members and staff and which ones do not. The municipal activity reporting form should include a box with the name of the trained commission member or staff so the DEP can more easily note and respond to any municipalities that do not have trained members or staff.
- At every public hearing, municipal wetlands agencies should be required by statute to state whether or not they are in compliance with the current legal requirement to have at least one trained member or staff person.
- The DEP should award a municipality, upon application, special certification if the majority of the members complete the DEP's wetlands training program.
- The General Assembly should appropriate the funds necessary to develop required video training materials (DVDs and on-line). A video-based course with a workbook or an on-line training course should be created as a substitute for some classroom portions of the training program; the DEP is moving slowly toward this goal but to date has had to rely on one-time grants and settlements from unrelated enforcement cases to fund these efforts.

## REPORTING

**Question 2: Why do many municipalities fail to submit mandatory wetlands permit reports to the DEP, and does it matter?**

**Answer: Cities and towns say they do not report because of other priorities, a perceived lack of benefits, confusion, and inconvenience. According to Council research, the nonreporting towns are not derelict in their permitting duties, but their failure to report makes it difficult for the DEP to analyze trends in wetlands destruction.**

The DEP provides each municipality with paper copies of a form entitled Statewide Inland Wetlands & Watercourses Activity Reporting Form. The "Activity Reporting Form," as it is more commonly known, is a one-page form that documents the extent of wetland or watercourse disturbed as well as the purpose of the permit application

and the action taken by the town. Municipalities are required to submit reports monthly, one for each decision made. Many towns fail to submit the required reports.

#### WHO IS NOT REPORTING?

One obvious distinction between reporting towns and non-reporting towns is population size. The table below shows clearly that larger towns (population over 20,000) are more likely to report than smaller towns.

| Years Failed to Report (2000-2007) | Average Town Population |
|------------------------------------|-------------------------|
| 1-2 years                          | 23,668                  |
| 3-4 years                          | 23,753                  |
| 5-6 years                          | 15,661                  |
| 7-8 years                          | 10,505                  |

Towns that failed to report all eight years (not shown in table) had an average population of 9,580 while the towns that reported their data all of the eight years had an average population of 20,187.

This difference in reporting rates could be due to workload pressures on smaller towns that are more likely to rely on volunteer commissioners or have fewer personnel to do administrative work. To test [this](#) idea, the Council conducted a telephone survey. Representatives of nonreporting towns were asked why they believed towns did not submit the required activity reporting forms (including towns that had completed, but not mailed, the forms). They were also asked what the DEP might do to help ensure that towns report their decisions.

Some towns misunderstood the reporting requirement, and most towns said that the reports are a low priority. Most also stated a desire for a simpler or quicker reporting process, and strongly favored an online reporting system.

Far from finding the nonreporting towns to be underperforming or uncaring about implementation of the Inland Wetlands and Watercourses Act, the Council found that some of the nonreporting towns were the most assiduous in everything but reporting. Examples include the towns of South Windsor and Berlin: the DEP reporting forms were present in some of the application folders and filled out in full. The records were very orderly and it was easy to find specific applications. The work was already done and in an organized state, stored on a spreadsheet on the town computer. This discovery reflects a lack of enthusiasm for the final step of compiling and sending the reports to the DEP.

## Reporting Failures

The table below shows the number of towns that failed to report any wetlands decisions in each of the past eight years. The high numbers in 2006 and 2007 might be due to tardy town submissions or unfinished tabulation at the DEP.

| Year                     | '00 | '01 | '02 | '03 | '04 | '05 | '06 | '07 |
|--------------------------|-----|-----|-----|-----|-----|-----|-----|-----|
| # of Towns Not Reporting | 27  | 22  | 19  | 26  | 28  | 22  | 39  | 55  |

Of the 170 municipal wetlands commissions in Connecticut, 55 did not report their wetlands data for at least one of the years from 2000 through 2007. Thirteen did not report their data in any of the years from 2004 through 2007. These are listed below with their populations.

|                    |                   |
|--------------------|-------------------|
| Ansonia 18,650     | Marlborough 6,321 |
| Berlin 20,137      | Salisbury 4,047   |
| Brooklyn 7,815     | S. Windsor 26,030 |
| Cornwall 1,489     | Sprague 2,986     |
| Durham 7,358       | Watertown 22,347  |
| Glastonbury 33,077 | Westbrook 6,617   |
| Killingworth 6,438 |                   |

NOTE: Glastonbury, and perhaps other towns on this list, recently submitted reports for the missing years (after the completion of the Council's study).

On-line reporting should mean more compliance as well as monetary savings and improvements in state services to towns. Furthermore, reminders to tardy towns could be sent electronically and automatically, in contrast to the delayed paper reminders sent currently. While conversion to electronic reporting will cost the state some money, the current system costs the state and municipalities tens of thousands of dollars annually, taking into account copying, postage, data entry at the DEP, and the costs of sending out paper reminders to tardy towns.

The DEP is limited in what it can do with the data once it is submitted (a factor that a few towns cited when asked why they do not report). When a year closes, it takes the DEP about three years to prepare a report on trends. And some of the information presented is of questionable value. Municipalities are required to report the area of wetlands enhanced as a result of each decision, but the definition of "enhanced" ranges from attempts at wetland creation to dredging of existing ponds (which might or might not be a true enhancement). The DEP publishes numbers on enhancement, but nobody audits the enhancement projects to determine the relative rates of failure and success, let alone the actual ecological value, if any, of the enhancements.

### RECOMMENDATIONS FOR REPORTING

- The DEP should create a simple system for towns and cities to submit their required wetlands activity forms electronically. The DEP should consult with municipalities so the system meets their needs as well as the DEP's own

needs for secure reliable data. An electronic system should include automatic reminders to tardy towns, avoiding the time and expense of the physical mailings common under the current system.

- The General Assembly should appropriate the necessary funds to the DEP for creating the on-line reporting system.
- The DEP's wetlands training program should include more information on reporting and how the data are used, so all municipalities see the benefit of submitting the required reports.
- When the DEP improves the reporting system, it should eliminate the confusing elements of the current reporting form. (As one example, some towns might classify an athletic field project as a municipal project while another might classify an identical project as a recreation project). The new reporting forms also should identify the person on the municipal agency or staff who has completed the training program.

## **DEP OVERSIGHT**

**Question 3: Does the DEP fulfill its statutory responsibility to "exercise general supervision of the administration and enforcement" of the IWWA?**

**Answer: Not completely.**

With a staff of three, the Inland Wetlands Management section of the DEP is able to:

- Respond to some but not all telephone requests for information and advice.
- Evaluate the status and trends of wetlands in Connecticut, based on reports submitted by municipalities, after several years' delay.
- Respond to reports of illegal wetlands activity on a one-at-a-time basis, with very little opportunity for field visits, with the result that some allegations are investigated and resolved after a delay of many months or perhaps never.
- Encourage but not compel municipalities to comply with legal obligations regarding training and enforcement.

The DEP is not able to provide technical assistance to municipalities, as it once did, nor is it able to fulfill its responsibilities for enforcement when municipalities fail to act. And while municipalities are required to submit changes to their regulations to the DEP, the latter is not able to provide feedback.



The DEP is authorized to revoke municipalities' wetlands authority when they fail to implement the IWWA properly (CGS Section 22a-42d). Such failure could include shortcomings in the permitting process or not completing the training program. No municipality has ever had its authority revoked, and the DEP does not want to take such action.

Serious problems may lead to the issuance of an "advisory letter" informing the town of errors in administration or interpretation of the law. These letters direct them how to modify their behavior to come into compliance. The DEP sends one of these advisory letters about once every two years.

Aside from these two methods – revocation of authority and advisory letters – for correcting municipalities that might be underperforming, the DEP has no corrective tools to employ.

It is unfortunate that the DEP is not able to provide the assistance it once did to municipalities both for complex cases and amendments to regulations.

For the complex cases, the Council concludes that the era of technical assistance to municipalities is over. Where does this leave the municipalities that have little or no professional staff when a large or complex development is proposed? In some cases, a municipality might be able to obtain advice from its Soil and Water Conservation District or an Environmental Review Team. In general, however, the DEP's recommendation is for each municipality to raise its application fee to a level that allows the commission to hire expert consultants of its own. Many towns evidently are reluctant to charge their residents hefty application fees. Such reluctance will take its toll eventually on wetlands and watercourses. Without its own expert advice on the record, a commission will have no legal choice but to accept each applicant's reports and approve all permits; this is the conclusion the Council draws from recent state Appellate and Supreme Court decisions on wetlands appeals.

#### RECOMMENDATIONS FOR DEP OVERSIGHT AND ENFORCEMENT

- The DEP should analyze submitted data continuously to identify municipalities that are "underperforming" (that is, permitting more wetland disturbance with each decision than the average municipality). The DEP should then work with those towns to identify the reasons for the permitted disturbances as well as possible need for additional training or other assistance.
- The General Assembly should appropriate funds for at least two more staff positions to allow the DEP to fulfill its statewide oversight and enforcement obligations. The DEP should have staff, separate from the training staff, to investigate potential problems that individual municipalities might be having in implementing the IWWA, and for investigating alleged wetlands violations in cases where a municipality fails to act.

## INDEPENDENT COMMISSIONS

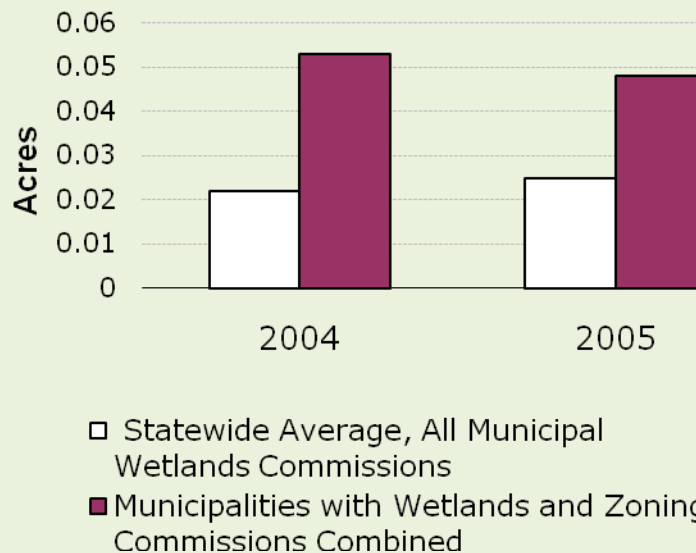
**Question 4:** Does the combining of Zoning and Inland Wetlands authority into a single municipal commission have an effect on wetlands destruction?

**Answer: Yes.**

Nine municipalities have a single commission perform both zoning and inland wetlands regulation.

The Council examined reported data for wetlands permits issued in 2004 and 2005. In both years, the average acreage of wetlands disturbed *per permit* was about twice as great for the combined commissions when compared to the statewide average.

**Average Area of Wetlands Disturbed Per Permit Issued**



While not every combined commission allowed more wetlands disturbance than the average commission, the combination of zoning and wetlands regulation into a single commission is one of the strongest predictors of greater-than-average wetlands disturbance.

The Council did not evaluate the reasons for the difference in performance, but the Connecticut Association of Conservation and Inland Wetlands Commissions (CA-CIWC) describes several disadvantages that combined commissions face in a 2006 [position paper](#). Disadvantages include insufficient time for commission members to attend to all duties fully, unreasonable expectations that each member can master the legal and technical complexities of both zoning and inland wetlands regulation, and workloads that discourage citizens from volunteering for duty. As most zoning

commissions are also combined with planning responsibilities, the challenges of also dispatching one's inland wetlands duties are daunting.

#### RECOMMENDATION FOR INDEPENDENT COMMISSIONS

- The General Assembly should require municipalities to have inland wetlands agencies that are separate from zoning commissions. Such legislation could establish a deadline in the future that would give the nine affected municipalities time to prepare, and could also allow for exceptions based on measured performance, infrequency of wetlands decisions (such as in the major cities), or other variables.

## ABOUT THE COUNCIL ON ENVIRONMENTAL QUALITY

The duties of the Council on Environmental Quality are described in [Sections 22a-11 through 2a-13](#) of the Connecticut General Statutes. The Council is a nine-member board that works independently of the Department of Environmental Protection (except for administrative functions). The Chairman and four other members are appointed by the Governor, two members by the President Pro Tempore of the Senate and two by the Speaker of the House. The Council's primary responsibilities include:

1. Submittal to the Governor of an [annual report](#) on the status of Connecticut's environment, including progress toward goals of the statewide environmental plan, with recommendations for remedying deficiencies of state programs.
2. Review of state agencies' construction projects.
3. Investigation of citizens' complaints and allegations of violations of environmental laws.

In addition, under the [Connecticut Environmental Policy Act \(CEPA\)](#) and its attendant regulations, the Council on Environmental Quality reviews Environmental Impact Evaluations that state agencies develop for major projects. The Council publishes the Environmental Monitor (<http://www.ct.gov/ceq/monitor.html>), the official publication for project information under CEPA.

### COUNCIL MEMBERS

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Earl W. Phillips, Jr.

M. Howard Beach

Bruce R. Fernandez

John M. Mandyck

Richard L. Sherman

Norman VanCor

Barbara C. Wagner

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### Staff

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