

2013 MUNICIPAL INLAND WETLANDS AGENCY *CONTINUING EDUCATION* TRAINING:

LEGAL AND ADMINISTRATIVE UPDATES

EMERGENCY AUTHORIZATIONS

By the Connecticut Attorney General's Office

There Is No Explicit Authority to Issue an Emergency Authorization

- Once municipal inland wetlands regulations become effective, “no regulated activity shall be conducted upon an inland wetland or watercourse without a permit.” § 22a-42a(c)(1)
- Any person proposing to do so “shall file an application in such form and contain such information as the inland wetlands agency may prescribe” by regulation. § 22a-42a(c)(1)

The Permitting Process Is Not Amenable to Emergencies

- A hearing is required if “the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses” or a petition is received within 14 days after receipt[‡] of the application, or the agency finds that a hearing would be in the public interest. § 22a-42a(c)(1)
- Although an agency may issue a permit without a hearing if no petition is filed, the agency must wait for the end of the 14-day period
- Notice of a hearing must be published in a newspaper “at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. § 8-7d(a)
- In deciding whether to grant a permit, the agency “shall consider the factors set forth in” § 22a-41. § 22a-42a(d)(1)
- Decisions on permits require substantial evidence, which may necessitate reports, expert testimony, cross-examination, analysis of feasible and prudent alternatives, plan revisions, etc. In other words, TIME

[‡] Receipt of an application occurs on the day of the next regularly scheduled meeting after submission, or 35 days, whichever is sooner. § 8-7d(c).

The General Assembly Has Explicitly Provided for Emergency Authorizations in Other Permitting Programs (i.e., It Is Difficult to Infer Such a Power in the Wetlands Act)

- Compare, for example, § 22a-363d, concerning permits for structures, dredging, and fill in coastal waters, which provides:

[i]n situations which may result in immediate, unforeseen and unacceptable hazards to life, health or welfare or significant loss of property if corrective action otherwise requiring a permit or a certificate of permission is not undertaken, the commissioner shall expeditiously approve or deny . . . the issuance of an emergency authorization to take any corrective action the commissioner deems necessary.

What Are Possible Options?

- An agency can delegate to an agent authority to approve or extend an activity not located in a wetland or watercourse, provided the activity “would result in no greater than a minimal impact on any wetland or watercourse.” § 22a-42a(c)(2)
- Issue a “friendly order” under the commission’s enforcement authority. Section 22a-44(a) provides that:

If the inland wetlands agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of [the Inland Wetlands and Watercourses Act], or of the regulations of the inland wetlands agency, the agency or its duly authorized may issue a written order, by certified mail, to such person conducting such activity or maintaining such facility or condition to cease immediately such activity or to correct such facility or condition.