Municipal Inland Wetland Agencies' Guide to Permit Conditions

I. Authority to condition permits 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 upon other terms, conditions, limitations or modifications of the regulated activity which 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.

Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the inland wetlands agency, or its agent, determines that such restrictions are necessary to carry out the policy of the IWWA.

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*…

1. Permit conditions correlate to the Factors for Consideration listed in section 22a-41. For example, a permit condition can relate to the maintenance and enhancement of long-term productivity of such wetlands or watercourses (factor (3)).
2. Factor for Consideration (4) contains the priority for conditioning permits as it relates to mitigation 2

II. General Permit Conditions

A. DEEP Inland Wetlands and Watercourses Model Municipal Regulations Fourth Edition May 1, 2006

General administrative conditions are provided in DEEP'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 agency 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 recognizes that the powers and duties of the municipal inland wetlands agency may change over time due to statutory amendments, and permits are subject to those future changes. It also separates property ownership from the decision-making process. It emphasizes that the permit relates only to activity that may affect wetlands and watercourses. It does not affect property rights. This condition provides notice to applicants that they may need other municipal, state and federal permits.

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 approved 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.

III. Specific Permit Conditions

A. Lawful Permit Conditions

A lawful permit condition relates directly to the regulated activity and wetlands and watercourses for which the municipal inland wetlands agency has authority. 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 1st and September 30th."
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."

B. Unlawful Permit Conditions

1. Conditions that do not relate to wetlands and watercourses. The municipal inland wetlands agency has authority over activities that may likely impact or affect wetlands and watercourses.
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).

C. Permit Conditions That Should Only Be Used With Caution

1. Conditions that attempt to complete an incomplete application. If the application is not complete, the municipal inland wetlands agency may deny the permit.
2. 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.