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Funding for this brochure was provided by a grant from the U.S. Environmental Protection Agency.

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Panel 9: horses and farm pond - image courtesy of USDA NRCS

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Printed on recycled paper
November 2014, reprinted October 2016



Agriculture



Forestry



& Connecticut's Inland Wetlands and Watercourses Act

Connecticut's Inland Wetlands and Watercourses Act

In 1972, the Connecticut Inland Wetlands and Watercourse Act (IWWA, Connecticut General Statutes (CGS) sections 22a-36 through 22a-45) was enacted. By doing so, the Connecticut General Assembly recognized that Connecticut's inland wetlands and watercourses are an indispensable and irreplaceable natural resource essential to:

- an adequate supply of surface water;
- hydrological stability and the control of flooding and erosion;
- the recharging and purification of groundwater; and
- the existence of many forms of animal, aquatic and plant life.

The General Assembly also acknowledged that many inland wetlands and watercourses had been destroyed due to unregulated uses such as filling, diversion of water flow, and pollution; and that such unregulated use has had, and will continue to have, a significant and adverse impact on the ecological, scenic, historic and recreational values and benefits provided by wetlands and watercourses.

The General Assembly further found that the preservation and protection of inland wetlands and watercourses was in the public interest and essential to the health, welfare and safety of the citizens of Connecticut.

The IWWA provides an orderly regulatory permitting process that balances the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology.

How are Inland Wetlands and Watercourses Defined?

The IWWA defines **wetlands** as land, including submerged land, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, of the Natural Resources Conservation Service, of the U.S. Department of Agriculture.

Tidal wetlands are not part of this definition and are not subject to regulation under the IWWA.

Inland wetlands that have been subject to prior disturbances from grading, draining, and/or filling may still meet the definition noted above. A soil scientist should be retained to make that determination.

The IWWA defines **watercourses** as rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private. Additionally, the IWWA states that **intermittent watercourses** are delineated by a defined permanent channel and bank, and the occurrence of two or more of the following characteristics:

1. evidence of scour or deposits of recent alluvium or detritus,
2. the presence of standing or flowing water for a duration longer than a particular storm incident, and
3. The presence of hydrophytic vegetation.

Please see the IWWA for complete definitions.

How are Agriculture and Forestry Defined?

The IWWA does not define agriculture or forestry. **Agriculture** and **farming** are defined in CGS section 1-1(q) and includes the cultivation of soil, dairying, *forestry*, and the raising or harvesting of any agricultural or horticultural commodity. The definition states that agriculture and farming includes the operation, management, improvement or maintenance of a farm and its buildings, tools and equipment. CGS section 1-1(q) also defines aquaculture as the farming of the waters of the state and the production of protein food, including fish and shellfish, on leased, franchised and public underwater farm lands. Please see CGS section 1-1(q) for the full definition.

The definition of agriculture includes forestry. Since forestry is not specifically defined in the CGS, we look to its commonly understood meaning. **Forestry** is the science, art and practice of developing, managing, cultivating, and harvesting a stand of trees.

When discussing forestry activities, the term silviculture is often used. **Silviculture** is the art and science of growing and tending forests for the production of wood and other benefits.



Silviculture encompasses a wide range of practices intended to reproduce forest stands or to increase the growth rate, vigor and value of trees. The benefits that healthy forests provide are numerous and include the production of saw timber, firewood, and maple syrup; the protection of drinking water; fish and wildlife habitat; and recreational opportunities.

What Agriculture and Forestry Activities Require a Permit?

The IWWA states that a regulated activity requires a permit. The IWWA defines a **regulated activity** as any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses.

The following agriculture and forestry activities are regulated activities:

- Construction of farm ponds *greater than* 3 acres;
- Construction of farm ponds of 3 acres or less *not essential* to the farming operation;
- Construction of roads *not directly related* to the farming operation;
- Erection of buildings *not directly related* to the farming operation;
- Filling of wetlands;
- Reclamation of wetlands;
- Filling of watercourses with continual flow;
- Reclamation of watercourses with continual flow;
- Relocation of watercourses with continual flow;
- Clearcutting of timber *for reasons other than* the expansion of agricultural crop land; and
- Mining of top soil, peat, sand, gravel or similar material *for the purposes of sale*.

Are There Any Agriculture or Forestry Activities that Do Not Require a Permit?

In recognition of the important role of agriculture and forestry to Connecticut's economy and quality of life, the IWWA states that certain farming activities are **permitted as of right**, regardless of their impact or affect to inland wetlands and watercourses. Further, these activities may be associated with existing operations and uses, as well as new operations and uses.

The following agriculture and forestry activities are permitted as of right:

- Grazing;
- Farming;
- Nurseries;
- Gardening;
- Harvesting of crops;
- Construction of farm ponds of 3 acres or less *essential* to the farming operation;
- Construction of roads or the erection of buildings *directly related* to the farming operation*;
- Clearcutting of timber for the expansion of agricultural crop land; and
- Mining of top soil, peat, sand, gravel or similar material, *except* for the purposes of sale.

***Important:** The filling of inland wetlands or watercourses requires a permit, even in instances where road construction or the erection of buildings is directly related to the farming operation.

Permitted as of Right activities do not include the filling of wetlands or watercourses under any circumstance.

Do Permitted as of Right Activities Require Any Authorizations?

The appropriate permitting agency must be consulted before conducting any agriculture or forestry activity that may be eligible for authorization as permitted as of right.

Connecticut's courts have affirmed that the permitting agency is legally entitled to review the proposed activity and make a finding (**jurisdictional ruling**) as to whether such activity is permitted as of right or requires a permit under the IWWA. This determination can not be made by the person proposing the activity. Depending on the full scope of all activities being proposed, the agency will make a jurisdictional ruling that an agriculture or forestry operation is either permitted as of right, requires a permit, or some combination of the two.

It is important to note that the permitting agency should not require the review of ongoing activities such as the grazing of livestock, the routine tilling of soil, and planting or harvesting of crops.

In addition, a jurisdictional ruling only applies to that particular proposed activity for which the finding was made. No new activity should proceed, which may impact or affect inland wetlands or watercourses, until either the agency makes a jurisdictional ruling that the proposed activity is permitted as of right, or until a permit is obtained.

If a proposed agriculture or forestry activity is to be conducted by, or on land owned or controlled by any

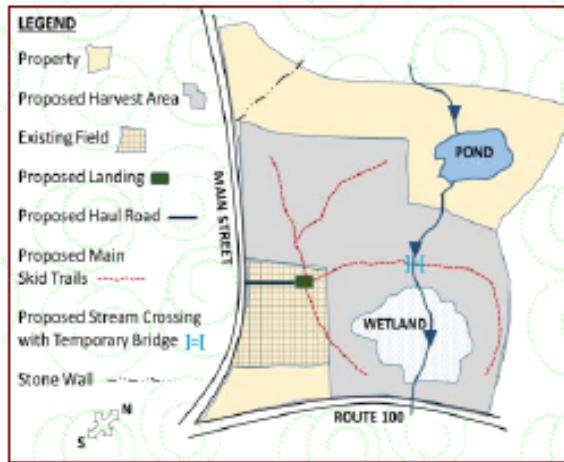
department, agency or instrumentality of the state, then the permitted as of right jurisdictional ruling shall be made by the Connecticut Department of Energy and Environmental Protection (DEEP).

A proposed agriculture or forestry activity conducted by a citizen or a municipality, on private or municipal land, needs to be reviewed by the inland wetlands agency for the municipality in which the activity is occurring.

What Kind of Information Needs to be Provided to the Permitting Agency for a Jurisdictional Ruling?

It is beneficial to consult the appropriate permitting agency's regulations (DEEP or municipal inland wetlands agency). The regulations will specify what information the agency requires to determine if a proposed agriculture or forestry activity is indeed permitted as of right. DEEP's regulations are available at: www.eregulations.ct.gov. Municipal inland wetlands agency regulations are often available on a town or city's website, from the Town Clerk's Office, or from the inland wetlands agency staff.

Providing the required documentation will allow the permitting agency to act on a request for a jurisdictional ruling in a timely manner. The information an agency needs in order to make a ruling is typically less than what is required in an application for a permit. Detailed engineering plans, land surveys, and soil scientist reports are usually not necessary. A brief written description with supporting documentation should be sufficient.



Supporting documentation that can assist the agency in assessing impacts to inland wetlands and watercourses may include:

- the location of the property drawn on a topographic or a town road map;
- a drawing or map showing the approximate location of inland wetlands and watercourses, existing buildings and roads, existing agriculture or forestry operations, and the new agriculture or forestry activities being proposed;
- the location and description of proposed wetland or watercourse crossings (e.g., bridges, culverts, corduroy, skid trails);
- a description of Best Management Practices; and/or
- a silvicultural plan prepared by a certified Forester, or a harvest plan prepared by a certified Forester or Supervising Forest Products Harvester.

After reviewing the supporting documentation, the permitting agency may rule that a proposed activity associated with an agriculture or forestry

operation requires a permit. If a permit is necessary, a complete permit application including any detailed plans, soil scientist reports, or other required information will need to be submitted.

How Can the Impact of Agriculture and Forestry Activities on Inland Wetlands and Watercourses be Minimized?

The DEEP recommends incorporating Best Management Practices (BMPs) into an agriculture or forestry operation as a way to prevent or minimize pollution and other environmental damage to inland wetlands and watercourses.

Agriculture and forestry BMPs are procedures, methods, or techniques implemented to reduce or eliminate the potential for wastes and wastewaters, spills and leaks, or other sources of pollution from reaching wetlands and watercourses. Attention to seasonal considerations, erosion controls, seeding, and stabilization will help protect inland wetland and watercourse resources from avoidable adverse impacts.



For more information on agriculture BMPs view the document titled, "*Manual of Best Management Practices for Agriculture: Guidelines for Protecting Connecticut's Water Resources*" revised 1996, available on the DEEP website.

For more information on forestry BMPs view the document titled, "*Best Management Practices for Water Quality While Harvesting Forest Products*" 2012 Connecticut Field Guide, also available on the DEEP website.

What Happens If an Agriculture or Forestry Activity is Conducted Without the Proper Authorization?

If an agriculture or forestry activity is conducted without obtaining a permitted as of right jurisdictional ruling, or without obtaining a permit, then the conduct of such activity is done in violation of the IWWA. Any person conducting or maintaining any activity, facility or condition which is in violation of the IWWA may be subject to enforcement action. Such action may include a fine up to \$1,000.00, an order to cease activity and/or to correct conditions at the site, or the pursuit of an action in Superior Court. The Superior Court can restrain a continuing violation, issue orders to correct or remove the violation, assess civil penalties, and pursue the assessment of damages including all costs, fees, and expenses, together with reasonable attorney's fees. Any person who willfully or knowingly violates the IWWA shall be fined for each day the violation continues or be imprisoned or both.



Are There Other Regulatory Requirements?

The U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and/or the U.S. Department of Agriculture may have authority over agriculture and forestry activities within wetlands and waters of the United States. Contact these federal agencies directly for details on their regulatory requirements. Contact information is available in this brochure under: "Where Can Further Assistance be Obtained?"

The State of Connecticut has additional regulatory programs which may affect an agriculture or forestry activity. The following is a list of the programs and contacts:

FOREST PRACTITIONER CERTIFICATION
DEEP Division of Forestry
(860) 424-3630

The Forest Practices Act defines a **forest practitioner** as anyone who advertises, solicits, contracts or engages in a commercial forest practice, at any time. A **commercial forest practice** is any forest practice performed by a person other than the owner of the subject forest land for remuneration, or which, when performed, yields commercial forest products.

Forest practitioners must be certified by the DEEP's Division of Forestry. Three levels of certification exist: Forester, Supervising Forest Products Harvester, and Forest Products Harvester. All forest practitioners are issued a license indicating their level of certification. A certified Forester can develop a silviculture plan. A certified Forester or Supervising Forest Products Harvester can develop a harvest plan. Only a Forester or Supervising Forest Products harvester can provide documentation to a municipal inland wetlands agency.

WATER DIVERSION PERMIT
DEEP Bureau of Water Protection & Land Reuse (860) 424-3019

A permit is required to withdraw surface or groundwater in quantities greater than 50,000 gallons during any twenty-four hour period; and for any alteration or modification of a wetland or watercourse, including but not limited to filling, dredging, draining, excavation, relocation, and channelization.

DAM CONSTRUCTION PERMIT
DEEP Bureau of Water Protection & Land Reuse (860) 424-3706

A permit may need to be obtained to construct, repair or alter a dam, dike or similar structure

PESTICIDE APPLICATION PERMIT
DEEP Pesticide Management Program
(860) 424-3369

A permit is required for the use of chemicals proposed for introduction into the waters of the state, public or private, for the control of aquatic organisms; and a permit is required for the use of pesticides and fertilizers when applied by aircraft.

AGRICULTURAL WASTE MANAGEMENT
DEEP Subsurface and Agriculture Section
(860) 424-3025

Livestock manure and agricultural wastewater management planning, technical and financial assistance information, and help in procuring required permits is available for farm businesses.

AQUACULTURE PERMIT
CT Department of Agriculture, Bureau of Aquaculture & Laboratory Services
(203) 874-0696

Public Act No. 99-93 directs that the Department of Agriculture shall have *exclusive* authority for granting or denying aquaculture permits. Questions regarding inland wetland or other water resource regulatory (permitting) requirements for any activity associated with aquaculture should be directed to the CT Department of Agriculture.

Where Can Further Assistance be Obtained?

In addition to the program contact information provided above, the following offer guidance on a wide range of topics dealing with the proper management of water resources. Publications are available online or by request.

MUNICIPAL INLAND WETLANDS AGENCY
Contact the municipal town hall

CONNECTICUT DEEP
(860) 424-3000
www.ct.gov/deep

DEEP INLAND WETLANDS MANAGEMENT SECTION
(860) 424-3019
www.ct.gov/deep/inlandwetlands

CONNECTICUT DEPARTMENT OF AGRICULTURE
(860) 713-2500
www.ct.gov/doag

UNIVERSITY OF CONNECTICUT EXTENSION
(860) 486-9228
www.extension.uconn.edu

**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT**
(800) 343-4789
www.nae.usace.army.mil

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1**
(617) 918-1111
www.epa.gov/region1

**U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
CONNECTICUT**
(860) 871-4011
www.nrcs.usda.gov/wps/portal/nrcs/site/ct

**U.S. DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE REGION 5**
(413) 253-8200
www.fws.gov/northeast

CONNECTICUT FARM BUREAU
(860) 768-1100
www.cfba.org

**CONNECTICUT PROFESSIONAL TIMBER
PRODUCERS ASSOCIATION**
(860) 948-0432

