

2009 MUNICIPAL INLAND WETLAND COMMISSIONERS TRAINING PROGRAM

Connecticut's Inland Wetlands and Watercourses Act: *A Primer for New Inland Wetlands Agency Members and Staff*

THE CONNECTICUT INLAND WETLANDS AND WATERCOURSES ACT (IWWA)

A SYNOPSIS BY THE CT DEP WETLANDS MANAGEMENT SECTION

1. Section 22a-36. Legislative Finding
 - a. Passed in 1972
 - b. Connecticut legislature's reason for law
 - c. Unique due to its extent

2. Section 22a-37. Short Title: Inland Wetlands and Watercourses Act
 - a. Provides citation reference

3. Section 22a-38. Definitions
 - a. Defines Regulated Activity, Wetlands, Watercourses, etc.
 - i. Inland Wetlands Agency has jurisdiction over "regulated activities"
 1. Definition: "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, but shall not include the specified activities in section 22a-40"
 2. The activity need not be conducted in wetland or watercourse itself, if the wetland or watercourse is altered or polluted by an action occurring elsewhere - this is long established by court cases
 - ii. Inland wetlands definition based on soil type, does not include tidal wetlands
 - iii. Watercourses definition uses more colloquial terms, further defines intermittent watercourses
 - iv. Note other definitions such as "material" and "pollution" which are used within the definition of "regulated activities"; "feasible" and "prudent"; etc.
 - b. If word in IWWA is not defined in this section, check to see if there are defined terms contained in other sections of the Act

- i. For example, "Habitats" is defined in Section 22a-41(c) for use in the application of that particular section of the Act, as are also "wetlands or watercourses", which are given additional meaning only for the purposes of Section 22a-41
 - c. If word in IWWA is not defined in this section, check to see if defined elsewhere in Connecticut General Statutes
 - i. For example, "Agriculture" and "Farming" defined in Section 1-1(q) of the Connecticut General Statutes
 - d. If word is not defined elsewhere in Connecticut General Statutes use commonly understood dictionary term
 - i. For example, "vernal" according to Webster's II New Riverside University Dictionary means: of, relating to, or happening in the spring
4. Section 22a-39. Duties of the Commissioner of DEP
- a. Lists a number of mandates that the Commissioner of DEP must comply with including developing a comprehensive training program for inland wetlands agency members, and providing a reporting form to municipal inland wetlands agencies on which they report to the DEP all actions they take
5. Section 22a-40. Permitted Operations and Uses
- a. Activities which are not regulated stated in this section, often referred to as the "exemption" section, such exemptions are narrowly construed
 - b. Court interpretation (case law) states that the Inland Wetlands Agency has the right to determine if an activity is exempt. The existence of an exemption (that is, the application of the statutory language to the facts of a particular situation) is not determined by the applicant but rather by the Inland Wetlands Agency
 - c. Subsection (a) are uses permitted in wetlands and watercourses as of right
 - i. Subsection (1) pertains to farming, use definition of farming found in Connecticut General Statutes Section 1-1(q)
 - 1. Note what is not exempt and therefore needs a permit:
 - a. Farm ponds greater than 3 acres
 - b. Farm ponds of 3 acres or less not essential to the farming operation
 - c. Road construction not directly related to the farming operation
 - d. Road construction involving filling of wetlands or watercourses
 - e. The erection of buildings not directly related to the farming operation
 - f. The erection of buildings involving filling of wetlands or watercourses
 - g. Relocation of watercourses with continual flow
 - h. Filling or reclamation of wetlands

- i. Filling or reclamation of watercourses with continual flow
 - j. Clear cutting of timber (only clear cutting of timber for expansion of crop land is exempt)
 - k. Mining of top soil, peat, sand, gravel or similar material for the purposes of sale
 - ii. Other subsections pertain to boat anchorage, maintenance of residential property, water company land, maintenance of drainage pipes, etc.
 - d. Subsection (b) are uses that are considered nonregulated uses in wetlands and watercourses provided they do not disturb the wetland or watercourse
 - i. Various conservation measures are included such as conservation of wildlife
 - ii. Various recreational activities are included such as swimming
6. Section 22a-41. Factors for Consideration, Finding of No Feasible and Prudent Alternative, Habitats, etc.
 - a. Subsection (a) contains the Factors for Consideration
 - i. Sets out a number of factors that inland wetlands agencies should consider when making decisions related to regulating, licensing and enforcing the IWWA
 - ii. The Inland Wetlands Agency does not need to express an opinion as to each factor, but must address some and with particularity (that is, applying the factor(s) to the facts of the permit application)
 - iii. Enables agency to consider mitigation measures as a condition of issuing a permit with priority being given to restoration of wetlands and watercourses
 - b. Subsection (b) is the Finding of No Feasible and Prudent Alternative
 - i. When a public hearing is held on an application because the Inland Wetlands Agency finds that the proposed activity may have a significant impact on wetlands and watercourses (see section 22a-42a(c)(1)), the agency can not issue a permit until it makes a finding that no feasible and prudent alternatives exist (see section 22a-41(b)(1))
 - 1. The finding of significant impact is a preliminary finding for the purposes of determining a need for a public hearing
 - ii. If a permit is denied due to no feasible and prudent alternatives then the Inland Wetlands Agency must record in writing the types of alternatives which the applicant may investigate (see Attorney General Presentation Outline, Sample Language for Motions)
 - 1. The requirement for the agency to propose types of alternatives does not shift the burden from the applicant to the agency to prove entitlement to a permit or to present alternatives. The burden to prove entitlement to a permit remains with the applicant
 - c. Subsection (c) and (d) Refers to Aquatic, Plant, Animal Life and Habitats
 - i. This section expressly authorizes the consideration of aquatic, plant or animal life and habitats in wetlands and watercourses; however, it

limits an inland wetlands agency's ability to consider such things outside of wetlands and watercourses absent of the finding of a "physical impact" to such wetlands and watercourses

- ii. Further defines "wetlands and watercourses" and "habitats" for the purposes of this section only

7. Section 22a-42. Municipal Regulation of Wetlands and Watercourses

- a. Declares that it is the public policy of the state to require municipal regulation of activities affecting wetlands and watercourses within the territorial limits of each municipality
- b. Allows municipalities to acquire wetlands and watercourses by gift or purchase, or some lesser interest in land (e.g.: conservation easements)
- c. Allows for municipal inland wetlands agencies to be established
- d. Requires at least one member of the inland wetlands agency or staff of the agency to complete the DEP's comprehensive training program
- e. Requires the inland wetlands agency to hold a meeting at least once annually to summarize the training program
- f. Allows for municipalities to join and form districts as opposed to individual town commissions
- g. Allows municipal or district commissions to enact regulations, in conformity with the IWWA; the factors for consideration contained in Sections 22a-41 must be incorporated

8. Section 22a-42a. Adoption of Regulations, Permits, Fees, Etc.

- a. Requires boundaries of wetlands and watercourses in the municipality to be established
- b. Provides process to establish and amend regulations or wetland boundaries
- c. Establishes the date of receipt of an application by the inland wetlands agency (references Connecticut General Statutes section 8-7d)
- d. Establishes when a public hearing can be held on an application:
 - i. When the agency has determined that the activity may have a significant impact on wetlands (see finding of no feasible and prudent alternative – 6b of this outline)
 - ii. When a petition (signed by at least 25 persons who are eighteen years of age or older and who reside in the municipality) is filed within 14 days of the date of receipt of the application
 - iii. When the agency finds that a public hearing would be in the public interest
- e. Allows the inland wetlands agency to delegate to a duly authorized agent the authority to approve or extend an activity not in wetlands or watercourses that would result in no greater than a minimal impact on such resources provided the duly authorized agent has completed the DEP's annual training program
- f. Gives the inland wetlands agency the authority to grant, deny or limit a permit for a regulated activity and establishes such procedure

- g. Allows the inland wetlands agency to suspend or revoke a permit and establishes such criteria and procedure
 - h. Establishes the life of permits and permit renewal procedure
 - i. In general, permits also requiring planning and zoning approval are valid for five years and the inland wetlands agency may establish a specific time period within which a regulated activity is to be conducted
 - ii. In general, permits not requiring planning and zoning approval are valid for not less than two years and not more than five years
 - iii. Permits can be renewed as long as the total length of the permit is not more than ten years. Holder of such permit must request renewal and no substantial change in circumstances or enforcement action can be occurring
 - i. Enables the inland wetlands agency to establish filing fees that may include fees sufficient to enable the Inland Wetlands Agency to review complex applications and to monitor compliance with permits or orders
 - j. Enables the inland wetlands agency to establish, through regulation, an Upland Review Area(s) where activities conducted in such areas require permits
 - i. Permit conditions on activities in the Upland Review Area must be directed towards protecting wetlands and watercourses
 - ii. Review by the Inland Wetlands Agency applies to those activities that are "likely to impact or affect wetlands or watercourses"
9. Section 22a-42d. Revocation of Authority to Regulate Inland Wetlands
- a. Provides for the Commissioner of DEP to revoke the authority of a municipal inland wetlands agency if such agency has consistently failed to perform its duties
10. Section 22a-42e. Applications Filed Prior to Change in Inland Wetlands Regulations
- a. The regulations in effect on the date of receipt of an application will continue to apply to that application even if the regulations are amended before a final decision on the application is made. This does not apply to the establishment, amendment or change of the boundaries of the regulated resources, or to those changes necessary to make municipal regulations consistent with the IWWA "as of the date of such receipt" of such application
11. Section 22a-42f. Notice of Application to Water Companies
- a. Establishes the process for an applicant to notify a water company if a regulated activity will be conducted within the watershed of the water company, if a map of the watershed boundaries has been filed in the municipality in which the proposed regulated activity is to take place

12. Section 22a-42g. Municipal Fine for Violation of Wetlands Regulations
 - a. This is a unique enforcement tool
 - b. Similar to a motor vehicle ticket - citation
 - c. Municipality must have an ordinance providing for fine, fine is limited to \$1,000.00
 - d. Can be issued by a police officer or any person authorized by the chief executive officer of the municipality
 - e. Requires the adoption of a citation hearing procedure by the municipality

13. Section 22a-43. Appeals
 - a. Appeals of any municipal inland wetlands agency decision must be made to the superior court, not DEP
 - b. This section establishes procedures for such appeals
 - c. The Commissioner of Environmental Protection receives notice of each appeal and may appear as a party to such appeal

14. Section 22a-43a. Findings on Appeal, Purchase of Land, Etc.
 - a. Addresses the issue of "taking without compensation"
 - b. Allows the purchase of land or an interest in land in order to carry out the purposes of certain sections of the IWWA
 - i. Inland wetlands agency cannot demand or require interest in land (such as a conservation easement). The applicant must offer such interest.

15. Section 22a-44. Penalty, Court Orders
 - a. This section enables an inland wetlands agency or its duly authorized agent to issue a written cease and correct order to any person conducting or maintaining an activity or condition that is in violation of the IWWA
 - b. Within ten days of issuing an order, the inland wetlands agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect
 - c. Cease and correct order is effective upon issuance and remains in effect until affirmed, revised or withdrawn by the inland wetlands agency
 - d. Provides for the assessment of civil penalties of up to \$1,000.00 per day of violation (only the superior court can assess the penalty)
 - e. Provides for costs, fees and expenses to be recouped
 - f. Civil penalties assessed can be used by the Commissioner of the Department of Environmental Protection to restore wetlands, etc.
 - g. Criminal liability for willful and knowing violations of the IWWA

16. Section 22a-45. Property Revaluation

- a. Property owners denied a permit in connection with a regulated activity affecting wetlands and watercourses are entitled to a property reevaluation to reflect fair market value in light of the restriction placed on it by denial of permit

17. Section 22a-45a through Section 22a-45d

- a. These sections are not applicable to municipal inland wetlands agencies; these are powers delegated solely to the Commissioner of the Department of Environmental Protection