

Agriculture...



Forestry...



...and Wetlands
Protection in
Connecticut

Produced by the Connecticut Department
of Environmental Protection

Connecticut has a long history of wetland and watercourse use relating to agriculture and forestry. While these resources have allowed Connecticut to thrive, their abuse by land use activities has resulted in increased severity of flooding, water pollution, loss of beneficial wildlife and fisheries, and diminished recreational values. Such abuse is evidence of how fragile our wetlands and watercourses are and how important it is to preserve them.

This pamphlet explains the relationship of agricultural and forestry-related pursuits to state and federal laws regulating the use of wetlands and watercourses. In Connecticut, such laws are the Connecticut Inland Wetlands and Watercourses Act (the Act), the Connecticut Forest Practices Act, Section 404 of the Clean Water Act, and Title XIV, Subchapter B of the Food Securities Act.

In response to public concern that unregulated development in wetlands and watercourses was adversely impacting the environment and ecology of the state, the Connecticut General Assembly passed the Act in 1972. The Act provides for regulation of wetlands and watercourses by each town. Any entity or individual must obtain a permit before conducting regulated activities affecting wetlands and watercourses. The Act recognizes the special role that farmers and foresters play as stewards of the land. Special provisions were included in the Act exempting many agricultural and forestry activities from permit requirements.

The Forest Practices Act passed in 1991 regulates forest activities which may affect wetlands and watercourses. Forest practices such as commercial timber harvesting for logs or firewood are key examples of operations which are covered by the law. The legislation is designed to protect and conserve Connecticut's forest resources by encouraging its wise and careful use.

Section 404 of the Clean Water Act, passed in 1972, set up a program for the federal government to protect wetlands. Section 404 of the Clean Water Act gave the authority to the U.S. Army Corps of Engineers (USACOE) to establish a permit system to regulate the dredging and filling of materials in waters of the United States, including most wetlands.

Title XIV, Subchapter B of the Food Securities Act, also referred to as the "Swampbuster" provision, restricts certain U.S. Department of Agriculture (USDA) benefits when draining or conversion of wetlands occurs.



With appropriate management, wetlands can

Why are Wetlands Valuable?

Wetlands are transitional areas between land and water, encompassing such diverse and complex ecosystems as riparian woodlands, vernal pools, peatlands, floodplains, marshes and swamps. Each individual wetland can provide different functions and possess different values.

These benefits can include:

- flood control
- ground water recharge and discharge
- water quality improvement
- biological productivity
- fish and wildlife habitat
- maintaining biodiversity and open space
- recreation and aesthetics
- education and scientific research

How are Connecticut's Wetlands and Watercourses Defined?

The Inland Wetlands and Watercourses Act defines wetlands and watercourses separately. **Wetlands** means "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 United States Department of Agriculture." **Watercourses** means "rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial,



John R. Kennedy

*ate Best Management Practices, agriculture and
be good neighbors.*

vernal or intermittent, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Excluded from the definition of wetlands and watercourses are those areas regulated as tidal wetlands. Tidal wetlands are regulated pursuant to section 22a-28 through 22a-35a of the Connecticut General Statutes. Wetlands and watercourses may include areas which have been subject to prior disturbances such as grading, draining, and filling.

How is Agriculture in Connecticut Defined?

The terms “agriculture,” “farming” and “forestry” are not defined in the Act. However, section 1-1(q) of the Connecticut General Statutes defines *farming* and *agriculture* to include: “cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife...” as well as “...the operation, management, conservation, improvement or maintenance of a farm and its buildings...” and “...construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes...”

Section 1-1(q) also defines *aquaculture* to include: “farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farmlands.” The Connecticut Department of Agriculture has exclusive authority for granting or denying certain aquaculture permits.

How is Forestry in Connecticut Defined?

Forestry is the science and practice of producing human benefits from the forest while protecting its long-term health and productivity. Clean water, wildlife habitat, recreational opportunities, firewood, timber and maple syrup are but a few examples of the many benefits forests provide to people. As noted above, forestry is included in the definition of farming and agriculture in section 1-1(q) of the Connecticut General Statutes. 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 to trees. Numerous terms associated with forestry are defined in section 23-65(f) of the Forest Practices Act.

The Forest Practices Act requires forest practitioners to be certified by the Connecticut Department of Environmental Protection (DEP) prior to conducting any commercial forest practices in Connecticut. The law requires that anyone who advertises, solicits, contracts or engages in commercial forest practices within Connecticut at any time must have the appropriate certificate issued in accordance with the law. A forest practitioner certification is only required for activities which occur on forestland. To qualify as forestland under state regulations, the parcel, or portion of a parcel must be at least one contiguous acre on which there is no structure, maintained landscape area, access way or other improvements and which is occupied by a minimum number of trees as described in the law. There are three levels of certification offered: Forester, Supervising Forest Products Harvester, and Forest Products Harvester. In Connecticut only a certified Forester is allowed to develop a silvicultural plan. Each level has a specific description of what activities they are permitted to do under the law. Contact the DEP Forestry Division for further details on this program.

How Can I Determine If My Property Contains Wetlands and Watercourses?

Municipal agencies and land owners can utilize the published soil survey maps and the town's official wetlands map for guidance in determining the general location of wetlands and watercourses. This is an important first step before initiating a new activity. Identifying wetlands and watercourses may be difficult for an untrained person. The available maps frequently show only the general location of regulated areas and may not be adequate for project planning purposes. A soil scientist may be required to delineate wetlands and watercourses on a site if the precise location of such area is needed.

Advice regarding the presence of wetlands and watercourses on your land may be obtained by contacting:

- your local Inland Wetlands Agency or agent
- your county soil and water conservation district
- a soil scientist
- the USDA Natural Resources Conservation Service
- the U.S. Army Corps of Engineers

What is Considered a Regulated Activity in a Wetland and Watercourse Under Connecticut Law?

Since almost seventeen percent of the state contains wetlands, it is very likely that the land you farm or use for forestry has a wetland or watercourse on it. A person proposing to conduct a regulated activity in or affecting a wetland or a watercourse must first obtain a permit from an Inland Wetlands Agency. State agencies proposing a regulated activity must obtain a permit from the DEP. A permit may also be needed from the USACOE. The Act 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, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes.” In addition, Inland Wetlands Agencies can incorporate buffer or upland review area provisions into the definition of regulated activity. Therefore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removal of material and discharging of storm water on the land within a certain distance (specified by the town) measured horizontally from the boundary of any wetland or watercourse may be a regulated activity. Further, it is important to understand that the Inland Wetlands Agency may rule that any other activity located within such upland review area, or in any other non-wetland or non-watercourse area, is a regulated activity if it is likely to impact or affect wetlands or watercourses.

What Agricultural and Forestry Activities Require a Permit Under Connecticut Law?

The following activities require a permit under the Act:

- roadway construction not directly related to the farming or forestry operation

“Continual flow” means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle (June through September), but it recurs in prolonged succession.

Inland Wetlands Agency Jurisdiction

The Inland Wetlands Agency is legally entitled to review any proposed activity which may affect a wetland or watercourse. This includes proposed farming and forestry activities to determine whether such activity is regulated or qualifies as an exempt agricultural activity. Inland Wetlands Agencies should not, however, require the review of ongoing farming operations such as the routine tilling of soil, and planting or harvesting on croplands within wetlands or any locally established buffer zone.

- erection of buildings not directly related to the farming or forestry operation
- relocation of watercourses which have continual flow (see the definition of continual flow below left; relocation may be associated with channelization, culverting, dredging or installation of dams, dikes or diversion structures)
- filling or reclamation of wetlands or watercourses with continual flow
- mining of top soil, peat, sand, gravel, or similar material for purposes of sale
- clearcutting of timber not associated with the expansion of cropland

What Agricultural and Forestry Activities are Permitted as of Right Under Connecticut Law?

Many farming and forestry activities in wetlands and watercourses are permitted “as of right” and therefore are not regulated activities. The Act exempts the following activities from permit requirements whether such activities apply to existing operations and uses, or to new operations:

- grazing
- farming (including forestry)
- nurseries
- gardening
- harvesting of crops (including silviculture activities)
- farm ponds of three acres or less essential to the farming operation. This means that the pond is necessary and indispensable to sustain farming

activities. It is important to note while the excavation of the pond itself may be exempt, disposal of the excavated material into adjacent wetlands may require a permit.

- clearcutting of trees for the expansion of crop land
- construction of roads provided they are directly related to the farming or forestry operation
- erection of buildings provided they are directly related to the farming or forestry operation
- activities conducted by, or under the authority of, the DEP for the purposes of wetland or watercourse restoration or enhancement or mosquito control

Some of these activities may be regulated under the Federal Clean Water Act.

How Can I Determine If My Agricultural and Forestry Activity is Exempt Under Connecticut Law?

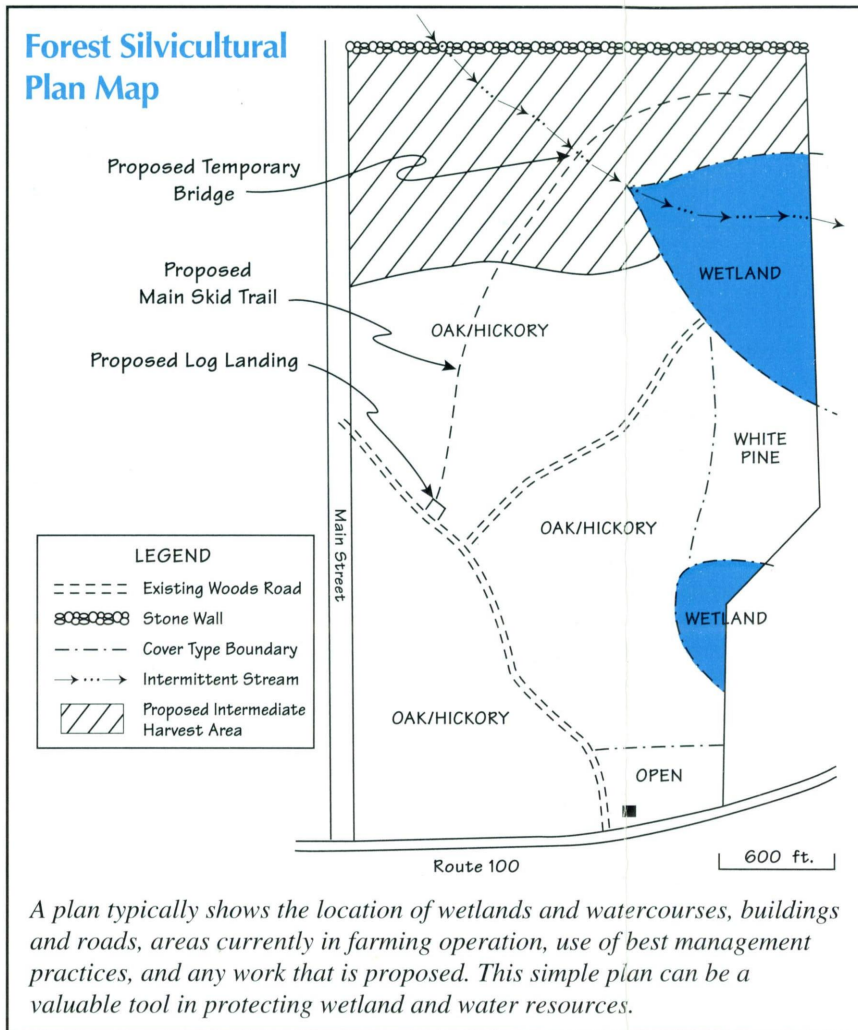
Your first step should be to contact the local Inland Wetlands Agency for a jurisdictional ruling. Inland Wetlands Agencies are entitled to review any non-state agency proposed activity which may impact a wetland or watercourse, and to request sufficient information about that activity to determine whether it is exempt. "Sufficient information" generally does not include everything that is normally required in a permit application for a regulated activity. A brief letter with backup documentation will often suffice. Detailed engineering plans, including soil scientist reports, are not usually required. However, you should consult the municipal regulations for specific requirements. Documentation may include the following:

Detailed engineering plans, including soil scientist reports, are not usually required. However, you should consult the municipal regulations for specific requirements. Documentation may include the following:

- a location map of your property (a photocopy of the U.S. Geological survey topographic map or town wetland map is ideal, but a town road map or sketch may suffice)
- a plan or drawing showing the location of wetlands, watercourses, areas currently farmed, building and road locations, and a sketch of what work you propose
- documentation that the use of the property is for agricultural purposes and that the work you propose is related to, or essential to, that activity

For forestry proposals, documentation might include the following:

- evidence that a certified professional forester is involved in planning and implementing the operation. Professional foresters must



A plan typically shows the location of wetlands and watercourses, buildings and roads, areas currently in farming operation, use of best management practices, and any work that is proposed. This simple plan can be a valuable tool in protecting wetland and water resources.

be certified by the Connecticut DEP and provide copies of their certificate upon request.

- a silvicultural plan prepared by a certified professional forester. These plans are derived from careful analysis of the forest sites where the proposed activity will be conducted. They clearly state the goals of the proposed activity and details on its implementation, including best management practices that will be utilized to minimize impacts on wetlands and watercourses.
- a forest stewardship plan. These plans can provide strong evidence that the proposed operation is part of an overall plan to enhance forest health and productivity. Plans written by a professional forester show landowners how to gain such benefits from their forest.
- a sketch map or drawing showing the general location of wetlands and watercourses and the practice(s) to be performed. If a silvicultural plan has been prepared it will typically include such a map.

The DEP encourages Inland Wetlands Agencies to provide expedited review procedures for “permitted as of right” agricultural or forestry activities. Providing good documentation will protect your rights under the law and will make it easier for the Inland Wetlands Agency to understand your proposal.

If a determination is made that the project or a portion of it is not exempt, an application must be filed for a wetland permit with the appropriate plans and supporting documentation so the Inland Wetlands Agency can make an informed decision. Inland wetlands regulations specific to each town will identify what information is needed for a complete permit application. No new activity should proceed that may affect wetlands or watercourses until a permit has been issued, or until the agency has determined that the project is exempt. Agriculture and forestry actions can be subject to the enforcement authority of the Inland Wetlands Agency if subsequent actions deviate from that which was authorized.

How Can I Limit the Impact of My Activities on Water Resources?

Whether a permit is obtained or an exemption is granted, all work should be carried out in an environmentally sensitive manner. All forestry activities should be conducted in adherence to professionally recognized prin-

ciples of forest management. Attention to seasonal considerations, erosion control, seeding and stabilization will help make your project successful.

Agricultural pollutant sources are nutrients (particularly nitrogen and phosphorus), sediment, animal wastes, pesticides and salts. These pollutants can enter surface water through direct runoff or through seepage into groundwater that discharges to a surface water outlet. Provided they are maintained in a natural and undisturbed condition, wetlands can help improve water quality, store floodwater, reduce erosion and recharge groundwater. The state's policy is to encourage agricultural and forestry practices consistent with Best Management Practices (BMPs) to protect our fragile water resources. BMPs are procedures or methods of reducing or eliminating the generation of wastes and wastewaters, spills and leaks, or other releases into the environment. For more information on BMPs and technical assistance on applying them, contact the agencies listed on the back of this pamphlet.

How are Wetlands Regulated by the Federal Government?

Two federal Acts, Section 404 of the Clean Water Act and Title XIV, Subchapter B ("Swampbuster") of the Food Security Act of 1985, as amended in 1990 and 1996, contain wetland conservation provisions, which govern the conversion of wetlands for the purpose of commodity crop and silvicultural production.

What is Section 404 of the Clean Water Act?

Section 404 of the Clean Water Act defines *wetlands* as "...those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." It is important to note that the federal definition of wetlands is different from the definition of wetlands under Connecticut's Act.

Section 404 of the Clean Water Act lists specific agricultural and silvicultural activities which are exempt from regulation, even though these activities occur on "jurisdictional wetlands." The regulatory agency which administers Section 404 of the Clean Water Act is the USACOE in consultation with the U.S. Environmental Protection Agency, the U.S. Department of Interior Fish

and Wildlife Service, the National Marine Fishery Service and the U.S.D.A. Natural Resources Conservation Service (NRCS). The NRCS can provide information on federal wetlands criteria, wetland determinations on agricultural lands, information on wetland soil characteristics, and interpretations and information on federal rules and regulations concerning administration of its programs.

What Farming and Forestry Activities are Exempt from Section 404 of the Clean Water Act?

There are basically two main provisions under Section 404 that must be satisfied for a farming activity to be exempt. Under Section 404(f)(1), a discharge is exempt only if it is associated with certain ongoing farming, silviculture, and ranching activities. Under Section 404(f)(2), known as the "recapture provision," the discharge continues to be exempt only if the activity does not bring an area of waters into a new use and impair the flow and circulation of the waters or reduce their reach.

Exempt activities are:

- established (i.e., ongoing), normal farming activities such as: plowing, seeding, cultivating, harvesting and minor drainage for the production of food or fiber
- maintenance (but **NOT** construction) of drainage ditches (the term "maintenance" includes removal of accumulated silt and debris, but does not in-

clude widening, deepening, realigning or extending the length of existing drainage ditches)

- construction and maintenance of irrigation ditches
- construction and maintenance of farm or stock ponds (to provide water for livestock or irrigation as long as the size and location of the pond are proportionate to the quantity of water needed to support the principal farming operation)
- construction and maintenance of farm and forest roads, in accordance with BMPs

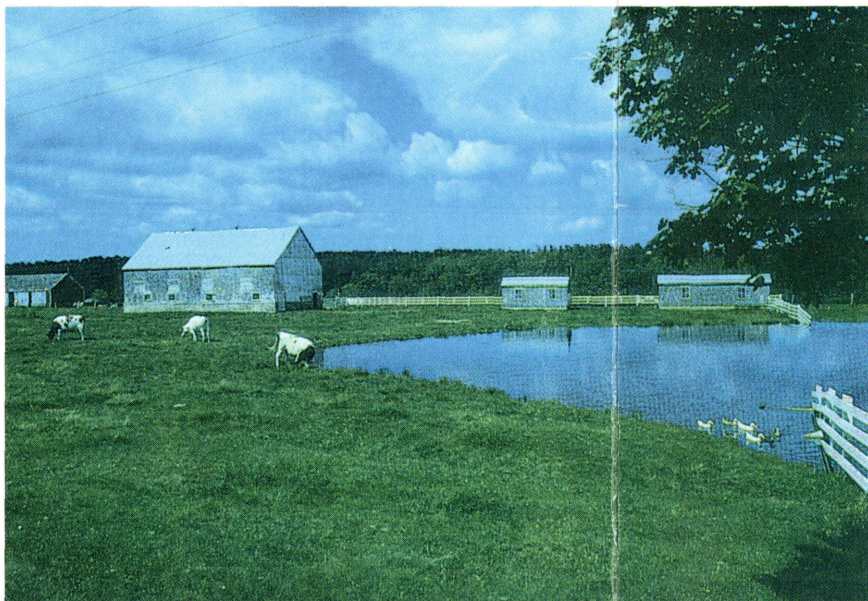
The list above is a summary. The full text of the federal law can be found in Section 404(f) of the Clean Water Act. Many clarifications and examples are found in the USACOE implementing regulations and inter-agency memoranda. (For further details the following Internet address can be accessed: [http://www.usace.army.mil/net/functions/cw/cecwo/reg with 404f.htm](http://www.usace.army.mil/net/functions/cw/cecwo/reg%20with%20404f.htm), [sec404.htm](http://www.usace.army.mil/net/functions/cw/cecwo/reg%20with%20404f.htm), [33cfr323.htm#323.4](http://www.usace.army.mil/net/functions/cw/cecwo/reg%20with%20404f.htm), and [cwaag.htm](http://www.usace.army.mil/net/functions/cw/cecwo/reg%20with%20404f.htm)).

To be exempt under Section 404 of the Clean Water Act, the farming or silvicultural activity must be part of an ongoing farming or silvicultural operation and cannot be associated with converting a wetland to agricultural or silvicultural production, or converting an existing agricultural or silvicultural wetland into non-wetland area.

Wetlands which were hydrologically altered and converted to produce an agricultural commodity (meaning an annually tilled crop) prior to December 23, 1985, and which were or are used for commodity crop production and remain in agricultural use, are identified as "prior converted croplands" when designated by NRCS. Such wetlands are not under the jurisdiction of Section 404 unless the activities which resulted in the conversion involved the unauthorized discharge of dredged or fill material into wetlands or other waters. Agricultural wetlands which have not been used, managed or maintained for cropping purposes

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Farm ponds of three acres or less are permitted as of right, but only if necessary and indispensable to sustain farming activities.



in the last five years are considered abandoned and generally are subject to regulation under Section 404. Areas that are inundated for longer than 14 days during the growing season are not prior converted but “farmed wetlands” and remain under Section 404 jurisdiction.

What Farming Activities are Regulated Under the Wetland Conservation Provisions (Swampbuster) of the Food Security Act as Amended?

The “Swampbuster” provision of the Food Security Act, as amended, restricts the USDA program benefits when persons:

- drain or convert wetlands including the removal of woody vegetation for the purpose of agricultural production after November 28, 1990; or
- plant agricultural commodity crops on converted wetlands which were converted by drainage, dredging, filling, leveling removing woody vegetation, or otherwise manipulated after December 23, 1985.

Conversion of wetlands for use in production of a commodity crop may result in the loss of all USDA program benefits including farm loans.

When Do Federal “Swampbuster” Provisions Apply?

The NRCS will, upon request, make a certified wetland determination on agricultural lands. This is the best way to determine if wetlands are present on your lands including the lands you rent, and what restrictions and exemptions apply to their use. The wetland determination can be done for either the owner or the producer. To request a certified determination, contact your local USDA NRCS office.

It is much easier to ask the question, “Do I have wetlands in my fields?” before they are altered, than after, when USDA benefits may be jeopardized, and wetland restoration required.



A skidder drops a load of logs in a landing area for trucking.

What Other Permits Might I Need?

The Connecticut DEP has a number of regulatory programs which may affect your farming or forestry operation. The following is a listing of the most common permits and the DEP unit which you may contact if questions arise:

- Dam construction or impoundments
DEP Dam Safety Program
Phone: (860) 424-3706
- Diversions of water for irrigation, dam construction, stream channelization or relocation
DEP Water Diversion Program
Phone: (860) 424-3019
- Pesticide application, algae control
DEP Pesticide Program
Phone: (860) 424-3369
- Agricultural waste management
DEP Water Bureau – Permitting, Enforcement and Remediation Division
Phone: (860) 424-3018
- Licensing of forest practitioners
DEP Forestry Division
Phone: (860) 424-3630

Where Can I Go for Assistance?

The following agencies and organizations provide guidance on a wide range of topics dealing with the proper management of water resources. Publications are often available upon request.

Municipal Inland Wetland Agency

Town Hall

CT DEP Wetland Management Program

(860) 424-3019

CT DEP Forestry Division

(860) 424-3630

CT DEP Wildlife Division

(860) 424-3011

CT Department of Agriculture

(860) 566-4845

CT Farm Bureau Association, Inc.

(860) 683-1922

CT Council on Soil & Water Conservation

(860) 424-3905

CT Cooperative Extension System

College of Agriculture and Natural Resources

University of Connecticut

(860) 486-6271

U.S. Army Corps of Engineers

(800) 343-4789

U.S. Environmental Protection Agency

(617) 565-3420

USDA Natural Resources Conservation Service

(860) 487-4011

USDA Consolidated Farm Services Agency

(860) 285-8483



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