

A Citizen's Guide to Participating in the Municipal Regulation Of Inland Wetlands and Watercourses

Do you own land that contains an inland wetland or watercourse? Do you feel someone is mismanaging his or her inland wetland? Do you want to know how the municipal process for inland wetlands and watercourses regulation works? And do you want to know how you can participate in that process? If so, this fact sheet is for you.

History

In 1972, the Connecticut Legislature enacted the Inland Wetlands and Watercourses Act (Act). This law is found in section 22a-36 through 22a-45 of the Connecticut General Statutes. The Act created a regulatory process to consider the impacts of proposed activities on inland wetlands and watercourses; and in keeping with the home rule political culture of our state, the Act provided for municipalities to implement this regulatory process. By the mid-1980s the majority of municipalities were administering the Act with the Connecticut Department of Environmental Protection (DEP) regulating activities within approximately 25 towns or cities.

In 1987, the Connecticut Legislature amended the Act and provided language that clearly signaled its desire to have all municipalities administering this law. Section 22a-42 of the Act was amended to read, "To carry out and effectuate the purposes and policies of sections 22a-36 to 22a-45, inclusive, it is hereby declared to be the public policy of the state to require municipal regulation of activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts". In addition, the amendment required that all municipalities establish an inland wetlands agency by July 1, 1988. As a result, all of Connecticut's 169 communities now have municipal inland wetlands agencies. In fact, there are 170 municipal inland wetlands agencies as the City of Groton and the Town of Groton are separate.

Today's municipal inland wetlands agency regulates activities that affect inland wetlands and watercourses within their municipal boundaries. These activities, often referred to as "regulated activities", are those proposed or conducted by all persons other than state agencies. State agency actions are solely regulated by the DEP. The volume of business conducted by municipal inland wetlands agencies is substantial on a statewide basis. Over 4,000 actions (such as permit approvals or denials, enforcement proceedings, etc.) are taken by Connecticut's municipal inland wetlands agencies annually, and this number is increasing by approximately 12 percent per year.

Your Involvement in the Municipal Regulatory Process

Property Owners

Your involvement with a municipal inland wetlands agency may result from various circumstances. You may own property that includes an inland wetland or watercourse. If you wish to conduct a regulated activity you may need an inland wetlands and watercourses permit. Most applicants for permits use professional consultants such as engineers, soil scientists, and attorneys to represent their interests before a municipal inland wetlands agency. However, municipalities often have simpler application requirements for small-scale projects often undertaken by property owners. All municipal inland wetlands agencies have established municipal regulations to administer the Act. Before you begin your activity you should carefully review your municipal inland wetlands regulations to determine which application requirements are appropriate to you.

Enforcing the Law

If you conduct an activity without the necessary approval from the municipal inland wetlands agency, or if you violate a condition of approval, you may be subject to enforcement action. Municipal inland wetlands agencies have authority to enforce all applicable sections of the Act and their municipal regulations. Enforcement actions may result in municipal fines, or court orders and civil penalties. The Act also provides that DEP may take enforcement action in any municipality in Connecticut. Municipal inland wetlands agencies and the DEP have substantial flexibility in enforcement matters and will often use informal enforcement tools such as phone calls and letters to ensure compliance. Many municipalities employ a wetlands agent to assist the inland wetlands agency and such agents are often involved in enforcement matters. As in the case of an applicant for a permit, persons subject to enforcement actions should carefully review the municipal inland wetlands regulations and determine if representation by legal counsel or other professionals is appropriate. As a citizen of a municipality, you may bring to the attention of the inland wetlands agency activities you feel may be improperly conducted. The best way to do this is to contact the wetlands agent. The agent can tell you if a permit has or has not been issued for the activity. Often citizen concerns are the first step in enforcement actions.

Attending Regular Meetings and Public Hearings

You may participate in the municipal inland wetlands regulatory process even if you are not an applicant or involved in an enforcement matter. You may have an interest in a particular proposal and wish to attend a meeting of the municipal inland wetlands agency. Most agency business is conducted during a regular meeting. A town or city agency must file each year a schedule of its regular meetings with the clerk of the town or city. The Connecticut Freedom of Information Act gives the public the right to attend the meetings of public agencies and view meetings while they are taking place. However, it is important to note that the public does not have the right to speak about an application for a regulated activity before the municipal inland wetlands agency. The forum in which the public may speak is

called a public hearing.

At a public hearing you have the opportunity to speak on an application currently before the municipal inland wetlands agency. This allows you to express your concerns or show support for a particular regulated activity. As per the Act, the agency will only hold a public hearing when certain circumstances apply. A hearing is allowed if the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses. The agency can also hold a hearing if the agency finds that a public hearing regarding the application would be in the public interest. Lastly, the agency must hold a hearing if it receives a petition signed by at least 25 persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, and the petition requesting a hearing is filed with the agency within fourteen days of receipt of the application. As stated earlier, a public hearing allows the municipal inland wetlands agency to receive comments from the public regarding a particular regulated activity. Municipal inland wetlands agencies may not allow you to question the applicant and his representatives unless you become a formal party to the proceeding by intervening.

Becoming an Intervener

Besides attending an agency's regular meeting or participating in a public hearing, you may intervene in the municipal inland wetlands agency's proceedings pursuant to section 22a-19 of the Connecticut General Statutes. Section 22a-19 of the Connecticut General Statutes allows any person to intervene as a party in any administrative proceeding by filing a verified pleading which claims that the proposal or proceeding "...involves conduct which has, or is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." A verified pleading is an acknowledged written statement signed by the intervener and for purposes of inland wetlands and watercourses jurisdiction, should focus on such resources. Since the intervener becomes a party to the proceeding, this allows the person to fully participate in the application review process conducted during both a regular meeting of the inland wetlands agency and an agency public hearing. That means an intervener can speak at a regular meeting and question the applicants as well as present their own experts outside of the public hearing format.

Appealing Decisions

Finally, if you feel that the action or decision of a municipal inland wetlands agency is erroneous, you may obtain legal counsel and take the matter to the state courts. Whatever the outcome of a regular meeting or a public hearing, the action or decision of a municipal inland wetlands agency cannot be appealed to the DEP. The Wetlands Management Section of the DEP receives numerous telephone calls every year from persons requesting that the DEP reverse or overturn an action or decision of a municipal inland wetlands agency. The Act does not provide any authority to the DEP to act as a board of appeals or to overturn the actions of municipal inland wetlands agencies. Appeals must be taken to state courts. Only the state courts can overturn such actions or decisions. Section 22a-43 of the Act requires that appeals must be made to the superior court for the judicial district where the land affected is located. The majority of legal appeals of municipal inland wetlands agencies actions in Connecticut involve appeals of permit decisions.