

Connecticut's Inland Wetlands and Watercourses Act



Background:

The Connecticut Inland Wetlands and Watercourses Act was passed in 1972 to protect the environmental quality of Connecticut's wetlands and watercourses. The Act exempts certain activities related to agriculture; however, jurisdiction for determining whether a particular agricultural activity is exempt from permitting under the law lies with the local municipal wetlands commission.

Key Points:

- **CGS Section 22a-40. Permitted operations and uses**, pertains to agricultural activities which are permitted in wetlands and watercourses as of right often referred to as the “exemption” section or “permitted as of right” section.
- CGS Section 22a-40 applies to new and existing farming operations.
- Jurisdiction for determining whether a particular agricultural activity is permitted as of right does not lie with the landowner or farmer but with the local municipal wetlands commission or agency.
- The local wetlands commission is made up of local citizen volunteers who are usually appointed as members to the commission.
- Local wetlands regulations are enforced by paid municipal staff.
- Municipal wetlands regulations are modeled after state regulations.
- Municipal wetlands commissions also regulate non-wetland areas in and around wetlands and watercourses. The size of the regulated buffer or upland review area can vary from municipality to municipality.
- The landowner or farmer has the burden of proving to the wetlands commission or agent that the agricultural activity falls within the exemption.
- The Act defines wetlands and watercourses. Wetlands are determined by certain soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey of the USDA Natural Resources Conservation Service (NRCS).
- Unlike inland wetlands, tidal wetlands are defined by the Tidal Wetlands Act by their current and former tidal connection, and their capacity to support certain vegetation. Tidal wetlands are regulated exclusively by the DEEP. If you are operating near coastal wetlands or tidal influenced watercourses, contact DEEP's office of Long Island Sound.
- “Farming” and “agriculture” are not defined in the Act therefore the Act relies on CGS 1-1q for defining what activities constitute “farming” and “agriculture”. And although many towns have adopted the DEEP model regulations (2006) which recommends that the “Farming” definition shall be consistent with the definition as noted in section 1-1(q) it is advisable to check your municipal regulations to see if they follow the DEEP model definition.

(Over)

2 Connecticut's Inland Wetlands and Watercourses Act (continued)

- There are numerous court cases regarding agriculture and the Act.
- No new activity should be conducted in or around wetlands or watercourses until a determination has been made by the wetlands commission or agent as to whether the activity is permitted as of right or regulated under the Act.

Statute:

CGS Section 22a-40. Permitted operations and uses. (a) The following operations and uses shall be permitted in wetlands and watercourses, as of right:

- (1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;

FAQs:

Q: What activities are permitted as of right under the Act?

A: Grazing, farming as defined by CGS 1-1q, nurseries, gardening, harvesting of crops, farm ponds of three acres or less essential to the farming operation, clearcutting of trees for the expansion of agricultural crop land, construction of roads provided they are directly related to the farming operation, erection of buildings provided they are directly related to the farming operation, activities conducted by or under the authority of the Connecticut Department of Energy and Environmental Protection (DEEP) for the purposes of wetland or watercourse restoration or enhancement or mosquito control. Only the wetlands commission can determine if a use is permitted as of right.

Q: What activities are not permitted as of right under the Act and therefore require an application for a permit?

A: Farm ponds greater than three acres, farm ponds of three acres or less not essential to the farming operation, filling of wetlands in conjunction with the excavation of a farm pond of three acres or less, road construction not directly related to the farming operation, any road construction involving the filling of wetlands or watercourses even if the road is directly related to the farming operation (the installation of culverts and bridges may be considered regulated), the erection of buildings not directly related to the farming operation, the erection of farm buildings involving filling of wetlands or watercourses, relocation or filling of watercourses with continual flow, filling of wetlands for any purpose, reclamation of

wetlands or watercourses with continual flow, clearcutting of trees for reasons other than the expansion of agricultural crop land, mining of top soil, peat, sand, gravel or similar material for the purposes of sale.

Q: I am constructing or improving a farm road in or near a wetland or watercourse which is essential to my farming operation. Is this considered a permitted as of right activity?

A: The construction or improvement of the farm road through a wetland or watercourse may be considered as of right but any fill, culverts, bridges etc. utilized to stabilize the road bed may require a permit. This determination lies with the municipal wetlands commission.

Q: I want to construct a farm pond of less than three acres which I consider essential to my farming operation. Is this considered a permitted as of right activity?

A: The excavation of the pond may be considered permitted as of right, but any material deposited into wetlands as designated by soil type would require a permit. This determination lies with the municipal wetlands commission. It is best to deposit the material in an area of the farm that does not involve the filling of wetlands.

Q: How is the best way to proceed to determine if an activity that I am going to undertake on my farm property is permitted as of right?

A: Prior to commencing the activity make an appointment with the wetlands enforcement agent in the town in which the farm is located. Be well prepared for the meeting with a detailed map of the farm showing where the activity is to take place and a detailed explanation of what the activity is, how it is to be conducted, who will be doing the work and why it is essential to the farming operation. Your local USDA service center can help prepare aerial photographs and basic soils maps which serve as a guide for your farm. If you are participating in a USDA program, NRCS soil scientists may be able to delineate any wetland boundary. You could request a site visit to your farm to show the agent what you are proposing.

Q: Once I meet with the agent can I proceed with the activity?

A: No. You must receive a determination of whether the activity is considered as of right by the wetlands commission or its' authority before you can proceed. This is called a jurisdictional ruling. Some agents have been given authority by their local wetlands commission to render decisions on permitted as of right activities. If that authority has not been granted to the agent by the commission then the agent will direct you to present your proposal before the wetlands commission at their next regularly scheduled meeting. The commission will then review your proposal based on the information you provide and determine whether all or part of the activity is permitted as of right or whether a permit may be required. If the activity has been deemed to be permitted as of right, it is recommended that you ask for this determination in writing from either the agent or the commission.

(Over)

4 Connecticut's Inland Wetlands and Watercourses Act *(continued)*

Q: Are there other laws that may apply to agriculture and wetlands?

A: Yes. It is best to consult with your local wetlands enforcement agent to determine if your proposed activity may require permitting from the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA) or any other state or federal agency. In addition, unauthorized draining or filling of wetlands may result in a loss of the ability to participate in USDA programs.

Q: Where can I find additional information on how the Act applies to farming and agriculture?

A: Here is the link to the CT DEEP Inland Wetlands main page:

http://www.ct.gov/deep/cwp/view.asp?a=2720&q=325682&deepNav_GID=1907

Here is the link to an informational brochure on agriculture and the Act (under Resources and References link).

http://www.ct.gov/deep/lib/deep/water_inland/wetlands/agriculture_forestry_and_wetlands_protection_in_ct.pdf

Notes: