



OLR RESEARCH REPORT

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CONNECTICUT REGULATION OF INLAND WETLANDS AND WATERCOURSES

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You asked about Connecticut regulation of inland wetlands and watercourses, specifically as it pertains to the town of Orange.

SUMMARY

Although the Department of Energy and Environmental Protection (DEEP) regulates activities in the state's inland wetlands and watercourses under the Inland Wetlands and Watercourses Act (hereafter, the Act), the Act requires municipalities to regulate activities in these areas when they are located within their boundaries. If a municipal inland wetlands agency determines that a person is violating state law or a local ordinance, the agency may issue a cease and desist order, and either impose a fine or request the court to impose penalties.

A Connecticut court can likewise order a responsible party to correct the condition it created. Anyone willfully or knowingly violating the law is subject to criminal penalties including: (1) for the first offense, a fine of up to \$1,000 a day, imprisonment for up to six months, or both and (2) for each subsequent offense, a fine of up to \$2,000 a day, imprisonment for up to one year, or both.

In Orange, the Inland Wetlands and Watercourses Commission adopted the Inland Wetlands and Watercourses Regulations in accordance with the Act. The commission enforces all provisions of these regulations and the Act, and is responsible for approving or denying permits for all regulated activities. A regulated activity includes removing or depositing material or any obstruction, construction, alteration, or pollution of such wetlands or watercourses.

Any citizen of a municipality may bring an activity believed to be improperly conducted to the attention of the inland wetlands agency by contacting the municipal wetlands agent. Likewise, any person owning or occupying land that abuts any portion of land within a radius of 90 feet of the inland wetland or watercourse may appeal any regulation, order, decision or action a municipal inland wetland and watercourse commission makes to the Superior Court.

According to Robert Gilmore of DEEP, under Section 404 of the Federal Clean Water Act, any discharge of material into an inland wetland or watercourse also requires a permit from the U.S. Army Corps of Engineers (33 USC § 1344).

Connecticut's Inland Wetlands and Watercourses Act

The Act regulates activities in state wetlands and watercourses. It defines "inland wetlands" as any land consisting of soil types designated as poorly drained, very poorly drained, alluvial, or floodplain by the U.S. Department of Agriculture. Watercourses include rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other water bodies. They may be natural or artificial, vernal (appearing in the spring) or intermittent, public or private, and must be contained within, flow through, or border upon the state.

The Act requires municipalities to regulate activities affecting inland wetlands and watercourses within their boundaries. Municipal inland wetlands regulations must minimally conform to the Act's provision, but may be more restrictive. Consequently, these agencies can impose stricter requirements or add different ones needed to protect wetlands within their borders. Any regulations adopted must conform to DEEP regulations, reflecting the general supervision, administration and enforcement of the Act.

Individuals must obtain a permit from their local inland wetlands agency to conduct “regulated activities” in wetlands or watercourses. A regulated activity includes removing or depositing material or any obstruction, construction, alteration, or pollution of such wetlands or watercourses. A permit is not required for property owners to conduct non-regulated activities, such as maintaining existing structures and landscaping ([CGS § 22a-36](#) to [22a-45](#)).

Town of Orange

In Orange, the Inland Wetlands and Watercourses Commission adopted regulations reflecting the Act’s purpose and provisions. The commission enforces the regulations and is responsible for approving or denying permits for all regulated activities within the town’s inland wetlands and watercourses. The permit application must include all information, as specified in the regulations, for the commission to make a fair and informed determination regarding the permit request.

The commission holds public hearings on permit applications only if (1) it determines the proposed activity may have a significant impact on inland wetlands or watercourses, (2) at least 25 residents present a signed petition requesting a hearing within 14 days of the application, or (3) the commission determines that a public hearing would be in the public interest. Notice of the public hearing is published and mailed to the owners of land abutting the inland wetland or watercourse for which a permit is requested.

Violations

Under the Act, municipal inland wetlands agencies must investigate reported violations and determine if enforcement action is warranted. An agency may issue a cease and desist order requiring the violator to stop the activity and correct the condition. The agency must hold a hearing on the order within 10 days of issuing it ([CGS § 22a-44\(a\)](#)). A municipality may also establish, by ordinance, a fine for violations of its regulations of up to \$1,000.

In Orange, the commission, as provided for in its regulations, inspects property, issues notices of violation or cease and desist orders, and carries out other actions or investigations necessary to enforce the regulations. The commission’s enforcement of the regulations reflects the Act’s penalty provisions. The commission may also suspend or revoke a permit if it finds that the permit holder has (1) not complied with the permit’s terms, conditions or limitations or (2) exceeded the scope of work as set forth in the permit application.

Regardless of whether an agency establishes its own fines for violations, anyone who violates the act, municipal ordinance, or regulation may be subject to a civil penalty of up to \$1,000 for each offense. Each violation is a separate and distinct offense and, in the case of a continuing violation, each day's continuance is a separate and distinct offense. The Superior Court, in an action brought by the DEEP commissioner, municipality, or any person, has jurisdiction over such matters and may (1) issue orders directing that the violation be corrected or removed and (2) assess civil penalties. All costs, fees, and expenses for such court actions, including reasonable attorney's fees, are assessed as damages against the violator ([CGS § 22a-44\(b\)](#)).

Anyone willfully or knowingly violating the Act is subject to a fine of up to \$1,000 a day while such violation continues, imprisonment for up to six months, or both. For a subsequent violation, such person is subject to a fine of up to \$2,000 a day, imprisonment for up to one year, or both ([CGS § 22a-44\(c\)](#)).

Aggrieved Property Owners

Any citizen of a municipality may bring an activity believed to be improperly conducted to the attention of the inland wetlands agency. According to DEEP, the best way to do this is to contact the wetlands agent to discover if a permit has been issued for the activity. In Orange, the Inland & Wetland Enforcement Officer is R. Scott Allen. His phone number is (203) 891-4746.

Likewise, any person owning or occupying land that abuts any portion of land within a radius of 90 feet of the inland wetland or watercourse may appeal any regulation, order, decision or action a municipal inland wetland and watercourse commission makes. The appeal (1) must be made to the Superior Court for the judicial district where the land affected is located and (2) must state the reasons for it. The Superior Court may enjoin the commission's action ([CGS § 22a-43](#)).

HYPERLINKS

Roles and Responsibilities of an Inland Wetlands Commission:

http://clear.uconn.edu/lua/online/fact_sheets/luafactsheetsinlandwetland.pdf

MR:km