

Highlights of this Proposal:

- Provides a simple and elegant solution, that utilizes the existing IWWA framework to provide protection for our state's riparian areas;
- Renames the Act and the Agencies to specifically include Riparian Protection (22a-37 and 22a-38);
- Provides a state-wide benchmark for delineating riparian areas (22a-38);
- Allows individual municipalities to determine riparian protection distances in similar fashion to the current method of determining Upland Review distances;
- Recognizes decades of existing case-law; and minimizes concerns regarding "Takings" and the associate litigation costs;
- Includes provisions for revegetation of riparian areas, and for the removal of invasive species (22a-40);
- More clearly & correctly identifies exemptions (22a-40);
- Addresses flood mitigation concerns caused by plugged drainage pipes and culverts (22a-40(6));
- Eliminates outdated language in Section 42a-22a(g);
- Will not significantly add to DEEP's workload or resource requirements.

CHAPTER 440*

WETLANDS AND WATERCOURSES

WETLANDS, WATERCOURSES, AND RIPARIAN PROTECTION

*Cited. 183 C. 532; 211 C. 416; 227 C. 71.

Cited. 21 CA 122; 25 CA 401; 26 CA 564; 29 CA 469; 37 CA 348; 43 CA 227.

Cited. 41 CS 184.

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Sec. 22a-28. (Formerly Sec. 22-7h). Preservation of tidal wetlands. Declaration of policy. It is declared that much of the wetlands of this state has been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this state are all in jeopardy of being lost or despoiled by these and other activities, that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. Therefore, it is declared to be the public policy of this state to preserve the wetlands and to prevent the despoliation and destruction thereof.

(1969, P.A. 695, S. 2.)

History: Sec. 22-7h transferred to Sec. 22a-28 in 1972.

See Sec. 26-17a re acquisition and preservation of tidal wetlands.

Annotation to former section 22-7h:

Cited. 161 C. 24.

Annotations to present section:

Cited. 168 C. 349; 180 C. 521; 183 C. 532; 209 C. 544.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-29. (Formerly Sec. 22-7i). Definitions. The following words and phrases, as used in sections 22a-28 to 22a-35, inclusive, shall have the following meanings:

- (1) "Commissioner" means the Commissioner of Energy and Environmental Protection;
- (2) "Wetland" means those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), sea lavender (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), high-tide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloe odorata*), royal fern (*Osmunda regalis*), interrupted fern (*Osmunda claytoniana*), cinnamon fern (*Osmunda cinnamomea*), sensitive fern (*Onoclea sensibilis*), marsh fern (*Dryopteris thelypteris*), bur-reed family (*Sparganium eurycarpum*, *Sparganium androcladum*, *Sparganium americanum*, *Sparganium chlorocarpum*, *Sparganium angustifolium*, *Sparganium fluctuans*, *Sparganium minimum*), horned pondweed (*Zannichellia palustris*), water-plantain (*Alisma triviale*), arrowhead (*Sagittaria subulata*, *Sagittaria graminea*, *Sagittaria eatoni*, *Sagittaria engelmanniana*), wild rice (*Zizania aquatica*), tuckahoe (*Peltandra virginica*), water-arum (*Calla palustris*), skunk cabbage (*Symplocarpus foetidus*), sweet flag (*Acorus calamus*), pickerelweed (*Pontederia cordata*), water stargrass (*Heteranthera dubia*), soft rush (*Juncus effusus*), false hellebore (*Veratrum viride*), slender blue flag (*Iris prismatica* *pursh*), blue flag (*Iris versicolor*), yellow iris (*Iris pseudacorus*), lizard's tail (*Saururus cernuus*), speckled alder (*Alnus rugosa*), common alder (*Alnus serrulata*), arrow-leaved tearthumb (*Polygonum sagittatum*), halberd-leaved tearthumb (*Polygonum arifolium*), spatter-dock (*Nuphar variegatum* *nuphar* *advena*), marsh marigold (*Caltha palustris*), swamp rose (*Rosa palustris*), poison ivy (*Rhus radicans*), poison sumac (*Rhus vernix*), red maple (*Acer rubrum*), jewelweed (*Impatiens capensis*), marshmallow (*Hibiscus palustris*), loosestrife (*Lythrum alatum*, *lythrum* *salicaria*), red osier (*Cornus stolonifera*), red willow (*Cornus*

amomum), silky dogwood (*Cornus obliqua*), sweet pepper-bush (*Clethra alnifolia*), swamp honeysuckle (*Rhododendron viscosum*), high-bush blueberry (*Vaccinium corymbosum*), cranberry (*Vaccinium macrocarpon*), sea lavender (*Limonium nashii*), climbing hemp-weed (*Mikania scandens*), joe pye weed (*Eupatorium purpureum*), joe pye weed (*Eupatorium maculatum*), thoroughwort (*Eupatorium perfoliatum*);

(3) “Regulated activity” means any of the following: Draining, dredging, excavation, or removal of soil, mud, sand, gravel, aggregate of any kind or rubbish from any wetland or the dumping, filling or depositing thereon of any soil, stones, sand, gravel, mud, aggregate of any kind, rubbish or similar material, either directly or otherwise, and the erection of structures, driving of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. Notwithstanding the foregoing, “regulated activity” shall not include activities conducted by, or under the authority of, the Department of Energy and Environmental Protection for the purposes of mosquito control, conservation activities of the Department of Energy and Environmental Protection, the construction or maintenance of aids to navigation which are authorized by governmental authority and the emergency decrees of any duly appointed health officer of a municipality acting to protect the public health;

(4) “Person” means any corporation, limited liability company, association or partnership, one or more individuals, and any unit of government or agency thereof.

(1969, P.A. 695, S. 1; 1971, P.A. 872, S. 400; 1972, P.A. 132, S. 1; P.A. 77-614, S. 323, 610; P.A. 87-589, S. 7, 87; P.A. 93-381, S. 9, 39; P.A. 95-79, S. 91, 189; 95-257, S. 12, 21, 58; P.A. 97-289, S. 4, 9; P.A. 11-80, S. 1.)

History: 1971 act defined “commissioner” as commissioner of environmental protection rather than as commissioner of agriculture and natural resources and substituted department of environmental protection for department of agriculture and natural resources “and its related agencies and boards”; 1972 act expanded list of plants common to wetlands in Subdiv. (2); Sec. 22-7i transferred to Sec. 22a-29 in 1972 and references to other transferred sections were revised; P.A. 77-614 replaced state health department with department of health services, effective January 1, 1979; P.A. 87-589 made technical change in Subdiv. (2); P.A. 93-381 replaced department of health services with department of public health and addiction services, effective July 1, 1993; P.A. 95-79 redefined “person” to include a limited liability company, effective May 31, 1995; P.A. 95-257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health, effective July 1, 1995; P.A. 97-289 amended Subdiv. (3) to exclude mosquito control activities of the Commissioner of Environmental Protection from the definition of “regulated activity”, deleting reference to Mosquito Control Division of Department of Public Health, effective July 1, 1997; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” and “Department of Environmental Protection” were changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” and “Department of Energy and Environmental Protection”, respectively, effective July 1, 2011.

Cited. 183 C. 532; 209 C. 544.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-30. (Formerly Sec. 22-7j). Entry on public or private property to carry out wetlands and watercourses responsibilities. Regulations. (a) The commissioner or his authorized representative shall have the right to enter upon any public or private property at reasonable times to carry out the provisions of sections 22a-28 to 22a-35, inclusive.

(b) Any regulated activities conducted upon any wetlands, whether or not such wetlands have been mapped, shall be subject to the provisions of sections 22a-32 to 22a-35, inclusive.

(c) The commissioner shall adopt, in accordance with the provisions of chapter 54, such regulations as said commissioner deems necessary to carry out the provisions of sections 22a-28 to 22a-35, inclusive, and, as applicable, sections 22a-90 to 22a-96, inclusive. Such regulations shall be consistent with the provisions of the federal Coastal Zone Management Act (P.L. 92-583) and the federal regulations adopted thereunder that pertain to tidal wetlands. Such regulations shall be for the purpose of qualifying the state and its municipalities for available federal grants pursuant to said (P.L. 92-583) and for the purpose of permit coordination with other state and federal programs affecting the tidal wetlands of the state. Such regulations shall establish criteria for granting, denying, or limiting permits giving due regard to the impacts of regulated activities on the wetlands of the state, adjoining coastal and tidal resources, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural disasters and water-dependent use opportunities as defined in chapter 444. The commissioner may also adopt, in accordance with the provisions of chapter 54, regulations which set forth informational material describing general categories of regulated activities for the purpose of providing permit applicants with more explicit understanding, provided such informational materials shall be consistent with and shall not increase the discretion granted to the commissioner under the policies, standards and criteria contained in sections 22a-28 and 22a-33 and, as applicable, section 22a-92.

(1969, P.A. 695, S. 3; 1971, P.A. 46, S. 1; 138, S. 1; 870, S. 115; P.A. 74-112, S. 1, 2; P.A. 76-436, S. 598, 681; P.A. 77-603, S. 103, 125; P.A. 78-280, S. 5, 127; P.A. 79-170; P.A. 80-356, S. 2, 3; P.A. 88-230, S. 1, 12; P.A. 90-98, S. 1, 2; P.A. 91-308, S. 1; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-215, S. 24, 29; P.A. 13-209, S. 2.)

History: 1971 acts added provisions granting commissioner or his representative right to enter upon public or private property to carry out provisions of Secs. 22-7h to 22-7o, empowering commissioner to designate areas in danger of despoilment as wetland before maps are prepared, changed "commissioner" to refer to environmental protection commissioner rather than commissioner of agriculture and natural resources, and, effective September 1, 1971, replaced superior court with court of common pleas except that courts with cases pending retain jurisdiction unless pending matters deemed transferable; Sec. 22-7j transferred to Sec. 22a-30 in 1972 and internal references to other transferred sections were revised; P.A. 74-112 added Subsec. (b) re inspection of wetlands and revision of boundary maps; P.A. 76-436 replaced court

of common pleas with superior court, effective July 1, 1978; P.A. 77-603 replaced previous appeal provisions with requirement that appeals be made in accordance with Sec. 4-183 but retained venue in Hartford county; P.A. 78-280 replaced "Hartford county" with "judicial district of Hartford-New Britain"; P.A. 79-170 required that copies of orders and hearing notice be sent by "certified mail, return receipt requested" rather than by "registered" mail and added Subsec. (c) re commissioner's power to make regulations; P.A. 80-356 detailed subject areas of regulations in Subsec. (c); P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 91-308 amended Subsecs. (a) and (b) to make the inventory and inspection of tidal wetlands by the commissioner discretionary rather than mandatory deleting provisions in Subsec. (a) re designation of area as wetland before mapping is complete to protect it from despoliation and further provided that certain regulated activities upon tidal wetlands would remain subject to provisions of this chapter regardless of whether they had been mapped; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-215 replaced "judicial district of Hartford" with "judicial district of New Britain" in Subsec. (a), effective June 29, 1999; P.A. 13-209 amended Subsec. (a) by deleting provisions re commissioner's authority to inventory all tidal wetlands, hold a hearing on tidal wetland boundary maps and establish the bounds of such wetlands and amended Subsec. (b) by deleting provisions re commissioner's authority to periodically inspect wetlands and revise wetland boundary maps.

Cited. 168 C. 349; 183 C. 532; 209 C. 544.

Cited. 25 CA 401.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-31. (Formerly Sec. 22-7k). Hearing officers. Section 22a-31 is repealed, effective October 1, 2013.

(1969, P.A. 695, S. 4; P.A. 13-209, S. 20.)

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Sec. 22a-32. (Formerly Sec. 22-7l). Regulated activity permit. Application. Hearing. Waiver of hearing. No regulated activity shall be conducted upon any wetland without a permit. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the

proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed or sent by electronic means to the chief administrative officer in the town or towns where the proposed work, or any part thereof, is located, and the chairman of the conservation commission and shellfish commission of the town or towns where the proposed work, or any part thereof, is located. The commissioner or the commissioner's duly designated hearing officer shall hold a public hearing on such application, provided, whenever the commissioner determines that the regulated activity for which a permit is sought is not likely to have a significant impact on the wetland, the commissioner may waive the requirement for public hearing after publishing notice, in a newspaper having general circulation in each town wherever the proposed work or any part thereof is located, of the commissioner's intent to waive said requirement and of the commissioner's tentative decision regarding the application, except that the commissioner shall hold a hearing on such application upon request of the applicant or upon receipt of a petition, signed by at least twenty-five persons, requesting such a hearing. The following shall be notified of the hearing by mail or by electronic means not less than fifteen days prior to the date set for the hearing: All of those persons and agencies who are entitled to receive a copy of such application in accordance with the terms hereof and all owners of record of adjacent land and known claimants to water rights in or adjacent to the wetland of whom the applicant has notice. The commissioner shall cause notice of the commissioner's tentative decision regarding the application and such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for the hearing in the newspaper having a general circulation in each town where the proposed work, or any part thereof, is located. All applications and maps and documents relating thereto shall be open for public inspection at the office of the commissioner. At such hearing any person or persons may appear and be heard.

(1969, P.A. 695, S. 5, 6; 1971, P.A. 872, S. 401; P.A. 73-590, S. 1, 3; P.A. 93-428, S. 7, 39; P.A. 94-154, S. 1; P.A. 95-218, S. 3; P.A. 10-106, S. 3.)

History: 1971 act deleted from list of those who receive copies of applications state board of fisheries and game, open spaces section and soil and water conservation section of department of agriculture and natural resources and shellfish commission; Sec. 22-71 transferred to Sec. 22a-32 in 1972; P.A. 73-590 added proviso re waiver of public hearing and petition for hearing; P.A. 93-428 specified that notice include commissioner's tentative decision in cases where he intends to waive hearing, effective July 1, 1993; P.A. 94-154 added provision re waiver or reduction of fees and defined "resource restoration or enhancement activity" (Revisor's note: In the phrase "no sooner than thirty days and not later than sixty days of the receipt of such application," the word "of" was replaced editorially by the Revisors with "after" for grammatical sense); P.A. 95-218 deleted a provision re reduction or waiver of fee for resource restoration or enhancement activities; P.A. 10-106 added provision authorizing commissioner to send copy of application to chief administrative officer of town by electronic means, deleted provision re time period for holding public hearing, added provisions authorizing applicant to request public hearing and authorizing notification of hearing by electronic means and made technical changes.

Cited. 183 C. 532; 209 C. 544; 227 C. 175; 232 C. 401.

Cited. 25 CA 401.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-33. (Formerly Sec. 22-7m). Issuance or denial of permit. In granting, denying or limiting any permit, the commissioner or his duly designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in sections 22a-28 to 22a-35, inclusive. The fact that the Department of Energy and Environmental Protection is in the process of acquisition of any tidal wetlands by negotiation or condemnation under the provisions of section 26-17a shall be sufficient basis for denial of any permit. In granting a permit, the commissioner may limit or impose conditions or limitations designed to carry out the public policy set forth in sections 22a-28 to 22a-35, inclusive. The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state compliance with the conditions and limitations set forth in the permit. The commissioner may suspend or revoke a permit if the commissioner finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The commissioner may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

(1969, P.A. 695, S. 7; 1971, P.A. 872, S. 402; P.A. 93-428, S. 18, 39; P.A. 11-80, S. 1.)

History: 1971 act replaced state board of fisheries and game with department of environmental protection; Sec. 22-7m transferred to Sec. 22a-33 in 1972 and internal references to other transferred sections were revised to reflect the change in numbering; P.A. 93-428 deleted requirement that commissioner make specific findings and publish notice of action taken on permit applications, effective July 1, 1993; pursuant to P.A. 11-80, "Department of Environmental Protection" was changed editorially by the Revisors to "Department of Energy and Environmental Protection", effective July 1, 2011.

Cited. 183 C. 532; 209 C. 544.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-34. (Formerly Sec. 22-7n). Appeal. (a) An appeal may be taken by the applicant or any person or corporation, municipal corporation or interested community group other than the applicant who has been aggrieved by such order from the denial, suspension or revocation of a permit or the issuance of a permit or conditional permit within thirty days after publication of such issuance, denial, suspension or revocation of any such permit to the superior court for the

judicial district of New Britain. If the court finds that the action appealed from is an unreasonable exercise of the police power, it may set aside the order. If the court so finds that the action appealed from constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interests and objectives of sections 22a-28 to 22a-35, inclusive, it may at the election of the commissioner (1) set aside the order or (2) proceed under the provisions of sections 48-12 to 48-14, inclusive, to award damages.

(b) Such appeal shall be brought in accordance with the provisions of section 4-183, except that venue for such appeal shall be in the judicial district of New Britain. Such appeal shall have precedence in the order of trial. The proceedings of the court in the appeal may be stayed by agreement of the parties when a mediation conducted pursuant to section 8-8a commences. Any such stay shall terminate upon conclusion of the mediation.

(c) When the persons who should otherwise be made parties to such appeal are so numerous that it would be impracticable or unreasonably expensive to make them all parties by personal service, the court to which such appeal is taken, or, if said court is not in session, any judge of said court, may order notice of such appeal to be given, by some method other than by personal service, to such of the parties as said court or such judge deems just and equitable, and notice so given shall operate to bind the interests of such parties on such appeal as fully as if personal service had been made upon such parties.

(1969, P.A. 695, S. 8, 9; 1971, P.A. 606; 870, S. 116; 1972, P.A. 108, S. 5; P.A. 76-436, S. 270, 681; P.A. 77-603, S. 12, 125; P.A. 78-280, S. 5, 127; P.A. 88-230, S. 1, 12; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-215, S. 24, 29; P.A. 02-132, S. 65.)

History: 1971 acts added Subsec. (c) re notice of appeal when parties to it are numerous, changed time for bringing appeals from "next return day or next but one" after filing of appeal to a return day not less than 12 or more than 30 days after service and, effective September 1, 1971, replaced superior court with court of common pleas except that courts with cases pending retain jurisdiction unless pending matters deemed transferable; 1972 act made technical correction in Subsec. (c), replacing superior court with court of common pleas as called for in 1971 act; Sec. 22-7n transferred to Sec. 22a-34 in 1972 and references to other transferred sections were revised to reflect the numbering change; P.A. 76-436 replaced court of common pleas with superior court, effective July 1, 1978; P.A. 77-603 replaced previous detailed appeal provisions in Subsec. (b) with provision requiring that appeals be made in accordance with Sec. 4-183 but retained venue in Hartford county; P.A. 78-280 replaced "Hartford county" with "judicial district of Hartford-New Britain"; P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-215 replaced "judicial district of Hartford" with "judicial district of New Britain" in Subsecs. (a) and (b), effective June 29, 1999; P.A. 02-132 amended Subsec. (b) by making a technical change and adding provisions re stay of appeal upon commencement of mediation pursuant to Sec. 8-8a.

Annotation to former section 22-7n:

Cited. 161 C. 24.

Annotations to present section:

Cited. 168 C. 349; 183 C. 532; 209 C. 544; 232 C. 401.

Cited. 25 CA 572.

Cited. 32 CS 104; 43 CS 386.

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Sec. 22a-35. (Formerly Sec. 22-7o). Penalty. Any person who knowingly violates any provision of sections 22a-28 to 22a-35, inclusive, shall be liable to the state for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is possible, and shall forfeit to the state a sum not to exceed one thousand dollars, to be fixed by the court, for each offense. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Attorney General, upon complaint of the commissioner, shall institute a civil action to recover such forfeiture. The Superior Court shall have jurisdiction in equity to restrain a continuing violation of said sections at the suit of any person or agency of state or municipal government.

(1969, P.A. 695, S. 10.)

History: Sec. 22-7o transferred to Sec. 22a-35 in 1972 and internal references to other transferred sections were revised to reflect their changed numbers.

Cited. 183 C. 532; 193 C. 414; 209 C. 544; 227 C. 175.

Cited. 32 CS 104.

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Sec. 22a-35a. Tidal wetlands restoration. The Commissioner of Energy and Environmental Protection, within available appropriations and bond authorizations, shall conduct wetlands restoration and enhancement projects, including but not limited to, open water marsh management and coastal culvert and tide gate management. Such projects (1) shall maximize successful recolonization of tidal wetland vegetation and long-term control of mosquitoes, mosquito larvae and mosquito habitats, (2) shall be consistent with the provisions of sections 22a-28 to 22a-30, inclusive, and sections 22a-90 to 22a-111, inclusive, and (3) shall be consistent with preservation, protection and restoration of tidal wetland values.

(P.A. 93-428, S. 28, 39; P.A. 97-289, S. 8, 9; P.A. 10-106, S. 4; P.A. 11-80, S. 1.)

History: P.A. 93-428 effective July 1, 1993; P.A. 97-289 added control of mosquito larvae to the requirements for projects under this section, effective July 1, 1997; P.A. 10-106 replaced reference to Sec. 22a-112 with reference to Sec. 22a-111; pursuant to P.A. 11-80, "Commissioner of Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection", effective July 1, 2011.

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Sec. 22a-36. Inland wetlands, and watercourses wetlands, watercourses and riparian areas.
Legislative finding. The inland wetlands, and watercourses wetlands, watercourses and riparian areas of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses wetlands, watercourses, and riparian areas are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses wetlands, watercourses, and riparian areas have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses wetlands, watercourses, and riparian areas. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands, watercourses, and riparian areas from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of sections 22a-36 to 22a-45, inclusive, to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses wetlands, watercourses, and riparian areas by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses wetlands, watercourses, and riparian areas for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

(1972, P.A. 155, S. 1.)

Cited. 179 C. 250; 180 C. 421; Id., 692. To interpret Sec. 22a-430 as precluding municipal regulation of sewerage systems would clearly work to undermine some of the basic purposes of the act as expressed in statute. 183 C. 532. Cited. 186 C. 67; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 227 C. 71; Id., 175; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 235 C. 448; 242 C. 335. Although one of the broad purposes of act is to prevent “loss of fish and other beneficial aquatic organisms, wildlife and vegetation”, when viewed in context of the act as a whole, the intent to protect wildlife is a secondary effect of protecting the wetlands and watercourses themselves. 266 C. 150. Inland Wetlands and Watercourses Act does not provide inland wetlands agencies with jurisdiction to regulate activities that solely affect the wildlife that uses the wetlands and watercourses without affecting the wetlands or watercourses themselves. 269 C. 57.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 25 CA 446; 26 CA 564; 27 CA 590; 28 CA 262; Id., 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 32 CS 104. Under Inland Wetlands and Watercourses Act, commissioner is limited to promulgating regulations and appealing from decisions of municipal commissions. 35 CS 145. Nothing obligates commissioner to include “balancing computation” in his opinion relative to economic factors described in section at risk of nullification of his entire action; section must yield to Sec. 22a-41 for factors to be considered. 36 CS 1. Cited. 41 CS 444; 42 CS 57.

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Sec. 22a-37. Short title: Inland Wetland and Watercourses Act Inland Wetlands, Watercourses, and Riparian Protection Act. Sections 22a-36 to 22a-45, inclusive, shall be known and may be cited as the “Inland Wetlands, Watercourses, and Riparian Areas Act”.

(1972, P.A. 155, S. 2.)

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 192 C. 247; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 335.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

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Sec. 22a-38. Definitions. As used in sections 22a-36 to 22a-45a, inclusive:

- (1) "Commissioner" means the Commissioner of Energy and Environmental Protection;
- (2) "Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof;
- (3) "Municipality" means any town, consolidated town and city, consolidated town and borough, city and borough;
- (4) "Inland ~~wetlands ageney~~ wetlands, watercourses, and riparian protection agency" means a municipal board or commission established pursuant to and acting under section 22a-42;
- (5) "Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management;
- (6) "Material" means any substance, solid or liquid, organic or inorganic, including, but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste;
- (7) "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the waters of the state;
- (8) "Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters;
- (9) "Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any of the waters of the state, including, but not limited to change in odor, color, turbidity or taste;
- (10) "Discharge" means the emission of any water, substance or material into waters of the state whether or not such substance causes pollution;
- (11) "Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast;
- (12) "Deposit" includes, but shall not be limited to, fill, grade, dump, place, discharge or emit;
- (13) "Regulated activity" means any operation within or use of a ~~wetland or watercourse~~ wetland, watercourse, or riparian area 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;

(NEW) “Riparian Area” means the land area immediately bordering a river or stream; delineated or computed from the Mean River Level (MRL) height at the bank of the river or stream.

(14) “License” means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of sections 22a-36 to 22a-45a, inclusive;

(NEW) “Mean River Level” (MRL) means the average height of the surface of a river or stream at any point for all stages of the tide over a 19-year period usually determined from hourly height recordings. Unusual variations of river level due to flooding, discharge or runoff may be excluded in computation.

(15) “Wetlands” means land, including submerged land, not regulated pursuant to sections 22a-28 to 22a-35, inclusive, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture;

(16) “Watercourses” means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon this state or any portion thereof, not regulated pursuant to sections 22a-28 to 22a-35, inclusive. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (A) Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation;

(17) “Feasible” means able to be constructed or implemented consistent with sound engineering principles;

(18) “Prudent” means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

(1972, P.A. 155, S. 4; P.A. 73-571, S. 2, 9; P.A. 87-533, S. 1, 14; P.A. 95-79, S. 92, 189; 95-313, S. 1; P.A. 96-157, S. 1; 96-269, S. 3, 4; P.A. 11-80, S. 1.)

History: P.A. 73-571 replaced definition of “conservation commission” with definition of “inland wetlands agency” in Subdiv. (4); P.A. 87-533 amended the definition of “municipality” to exclude metropolitan districts, village, fire and sewer districts, sewer districts and municipal organizations having authority to levy and collect taxes or make charges for its authorized functions; P.A. 95-79 redefined “person” to include a limited liability company, effective May

31, 1995; P.A. 95-313 redefined “wetlands” to make spelling and nomenclature corrections and redefined “watercourses” to include vernal or intermittent bodies of water; P.A. 96-157 amended the definition of “soil scientist” to update the reference to the federal Office of Personnel Management, amended the definition of “watercourses” to require evidence of two of the specified characteristics and added the definitions of “feasible” and “prudent”; P.A. 96-269 changed effective date of P.A. 96-157 from October 1, 1996, to January 1, 1997, effective June 12, 1996; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” in Subdiv. (1), effective July 1, 2011.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 192 C. 591; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 215 C. 616; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 227 C. 175; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 335. Definitions of “watercourses” and “wetlands” are limited to physical characteristics and do not include reference to wildlife protection or biodiversity. 266 C. 150.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166; 43 CA 239. Subdiv. (18): Access way that would more than double the impact to the wetlands is not a prudent alternative. 79 CA 49. Review of movement of motor vehicles within the scope of examination and evaluation by inland wetlands agency of impact that construction of subdivision might have on wetlands and watercourses. 103 CA 354.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

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Sec. 22a-39. Duties of commissioner. The commissioner shall:

- (a) Exercise general supervision of the administration and enforcement of sections 22a-36 to 22a-45, inclusive;
- (b) Develop comprehensive programs in furtherance of the purposes of said sections;
- (c) Advise, consult and cooperate with other agencies of the state, the federal government, other states and with persons and municipalities in furtherance of the purposes of said sections;
- (d) Encourage, participate in or conduct studies, investigations, research and demonstrations, and collect and disseminate information, relating to the purposes of said sections;
- (e) Retain and employ consultants and assistants on a contract or other basis for rendering legal, financial, technical or other assistance and advice in furtherance of any of its purposes, specifically including, but not limited to, soil scientists on a cost-sharing basis with the United

States Soil Conservation Service for the purpose of (1) completing the state soils survey and (2) making on-site interpretations, evaluations and findings as to soil types;

(f) Adopt such regulations, in accordance with the provisions of chapter 54, as are necessary to protect the ~~wetlands and waterecourses~~ wetlands, watercourses, or riparian areas or any of them individually or collectively;

(g) Inventory or index the ~~wetlands and waterecourses~~ wetlands, watercourses, and riparian areas in such form, including pictorial representations, as the commissioner deems best suited to effectuate the purposes of sections 22a-36 to 22a-45, inclusive;

(h) Grant, deny, limit or modify in accordance with the provisions of section 22a-42a, an application for a license or permit for any proposed regulated activity conducted by any department, agency or instrumentality of the state, except any local or regional board of education, (1) after an advisory decision on such license or permit has been rendered to the commissioner by the wetland agency of the municipality within which such wetland is located or (2) thirty-five days after receipt by the commissioner of such application, whichever occurs first;

(i) Grant, deny, limit or modify in accordance with the provisions of section 22a-42 and section 22a-42a, an application for a license or permit for any proposed regulated activity within a municipality which does not regulate its ~~wetlands and waterecourses~~ wetlands, watercourses, and riparian areas;

(j) Exercise all incidental powers including but not limited to the issuance of orders necessary to enforce rules and regulations and to carry out the purposes of sections 22a-36 to 22a-45, inclusive;

(k) Conduct a public hearing no sooner than thirty days and not later than sixty days following the receipt by said commissioner of any inland wetlands application, provided whenever the commissioner determines that the regulated activity for which a permit is sought is not likely to have a significant impact on the ~~wetlands and waterecourses~~ wetland, watercourse or riparian area, he may waive the requirement for public hearing after (1) publishing notice, in a newspaper having general circulation in each town wherever the proposed work or any part thereof is located, of his intent to waive said requirement, and (2) mailing or providing by electronic means notice of such intent to the chief administrative officer in the town or towns where the proposed work, or any part thereof, is located, and the chairman of the conservation commission and inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency of each such town or towns, except that the commissioner shall hold a hearing on such application upon receipt, not later than thirty days after such notice has been published, sent or mailed, of a petition signed by at least twenty-five persons requesting such a hearing. The commissioner shall (A) publish notice of such hearing at least once not more than thirty days and not fewer than ten days before the date set for the hearing in a newspaper having a general circulation in each town where the proposed work, or any part thereof, is located, and (B) mail or provide by electronic means notice of such hearing to the chief administrative officer in the town or towns where the proposed work, or any part thereof, is located, and the chairman of the conservation commission and ~~inland~~ wetlands agency of each such town or towns. All applications and maps and

documents relating thereto shall be open for public inspection at the office of the commissioner. The commissioner shall state upon his records his findings and reasons for the action taken;

(l) Develop a comprehensive training program for inland wetlands watercourses, and riparian protection agency members;

(m) Adopt regulations in accordance with the provisions of chapter 54 establishing reporting requirements for inland wetlands agencies, which shall include provisions for reports to the commissioner on permits, orders and other actions of such agencies and development of a form for such reports; and

(n) The commissioner shall issue a certificate to any member of a municipal inland wetlands watercourses, and riparian protection agency or its staff who completes the training program offered annually by the commissioner for such officials.

(1972, P.A. 155, S. 5; P.A. 77-397; 77-599, S. 1, 7; P.A. 80-16; P.A. 87-533, S. 3, 14; P.A. 95-313, S. 2; P.A. 13-209, S. 3.)

History: P.A. 77-397 specifically mentioned commissioner's power to issue orders in Subdiv. (h) and added Subdiv. (i) re commissioner's duty to conduct public hearings on inland wetlands applications; P.A. 77-599 inserted new Subdivs. (h) and (i) re commissioner's power to grant, deny, limit or modify applications for permits or licenses and relettered former Subdivs. (h) and (i) as (j) and (k); P.A. 80-16 expanded Subdiv. (k) to include provisions re waiver of hearing requirement and re hearings held upon receipt of petition requesting hearing; P.A. 87-533 amended Subdiv. (f) by adding reference to chapter 54 and added Subdiv. (l) regarding a training program for inland wetlands agency members and Subdiv. (m) regarding adoption by the commissioner of regulations establishing reporting requirements for inland wetlands agencies; P.A. 95-313 added Subdiv. (n) re certificate for municipal officials who have completed the training program; P.A. 13-209 amended Subdiv. (k) by adding provisions authorizing commissioner to provide notice to chief administrative officer by electronic means and making technical changes.

See Sec. 22a-6n re notice of commissioner's determination regarding application under this section.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 196 C. 213; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 231 C. 451; 242 C. 335.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 262; Id., 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; Id., 643; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 35 CS 145; 36 CS 1; 41 CS 184; Id., 444; 42 CS 57.

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

(1) Forestry, 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 Energy and Environmental Protection for the purposes of wetland and watercourse wetland, watercourse or riparian area 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 and watercourses~~ wetlands, watercourses or riparian areas for the purposes of sale;

(2) A residential home (A) for which a building permit has been issued, or (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;

(3) Public and private beaches, marinas, boat anchorage or moorings;

(NEW) The revegetation of riparian areas with native vegetation and removal of invasive species as identified in section 22a-381(d) of the general statutes;

(4) Uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality, provided in any town, where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse or diversion or alteration of a watercourse;

(5) Construction and operation, by water companies as defined in section 16-1 or by municipal water supply systems as provided for in chapter 102, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403;

(6) Maintenance relating to any drainage pipe ~~or culvert which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a or July 1, 1974, whichever is earlier~~, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, “maintenance” means the

removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place; and

(7) Withdrawals of water for fire emergency purposes.

(b) The following operations and uses shall be permitted, as non-regulated uses in ~~wetlands and watercourses~~ wetlands, watercourses, and riparian areas, provided they do not disturb the natural and indigenous character of the ~~wetland or watercourse~~ wetland, watercourse or riparian area by removal or deposition of material, alteration or obstruction of water flow or pollution of the ~~wetland or watercourse~~ wetland, watercourse or riparian area:

(1) Conservation of soil, vegetation, water, fish, shellfish and wildlife;

(2) Outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated; and

(3) The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, "dry hydrant" means a non-pressurized pipe system that: (A) Is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

(c) Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a state agency, which activity is regulated under sections 22a-28 to 22a-35, inclusive, or sections 22a-359b to 22a-363f, inclusive, shall not require any permit or approval under sections 22a-36 to 22a-45, inclusive.

(1972, P.A. 155, S. 3; P.A. 73-571, S. 1, 9; P.A. 77-599, S. 2, 7; P.A. 87-533, S. 2, 14; P.A. 88-364, S. 33, 123; P.A. 94-89, S. 15; P.A. 97-289, S. 5, 9; P.A. 98-209, S. 4; P.A. 11-80, S. 1; 11-184, S. 1.)

History: P.A. 73-571 allowed usage of wetlands and watercourses for grazing, farming, etc. purposes, for residential purposes, for boat anchorage or mooring and for water supply purposes "as of right" as was previously the case deleting exception "as they involve regulated activities", but allowed usage "as a nonregulated use ... provided they do not disturb the natural and indigenous character of the land" for conservation of soil, vegetation, etc. and outdoor regulation, where previously these uses too had been "as of right"; P.A. 77-599 amended Subsec. (a)(2) for clarity adding references to approval by municipal planning and zoning commissions and to July 1, 1974, as alternate approval date, amended (a)(4) for clarity by adding words "equal to or smaller than" with reference to lot size, by specifying that incidental uses include "maintenance of existing structures and landscaping" but exclude "removal or deposition of significant amounts of material from or onto a wetland or watercourse or diversion or alteration

of a watercourse", amended Subsec. (b) to specifically prohibit removal or deposition of material, alteration or obstruction of water flow or pollution of wetlands or watercourses and to refer to field "trials" rather than field "trails" in Subdiv. (2); P.A. 87-533 amended Subsec. (a)(1) to require permits for farm ponds not essential to the farming operation, and certain road construction, relocation of wetlands and watercourses with continual flow, clear cutting of timber, and mining for the purposes of sale and amended Subsec. (a)(2) to require permits for all residential homes after July 1, 1987; P.A. 88-364 made a technical change in Subsec. (a); P.A. 94-89 added Subsec. (a)(6) re maintenance of drainage pipes in certain wetlands areas; P.A. 97-289 amended Subsec. (a)(1) to include in the operations permitted as of right activities of the Commissioner of Environmental Protection re wetland or watercourse restoration and mosquito control, effective July 1, 1997; P.A. 98-209 added new Subsec. (c) re permitted uses by state agencies; pursuant to P.A. 11-80, "Department of Environmental Protection" was changed editorially by the Revisors to "Department of Energy and Environmental Protection" in Subsec. (a)(1), effective July 1, 2011; P.A. 11-184 amended Subsec. (a) by adding Subdiv. (7) re withdrawals of water for fire emergency purposes and making technical changes, and amended Subsec. (b) by adding Subdiv. (3) re installation of a dry hydrant by or under the authority of a municipal fire department.

Cited. 179 C. 250; 180 C. 421; Id., 692; 186 C. 67; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 358; Id., 579; 228 C. 95; 229 C. 627; Id., 654; 242 C. 335.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 7 CA 283; 12 CA 47; 15 CA 336; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166. A party cannot file a declaratory judgment action to circumvent the requests of a local wetlands commission to determine its jurisdiction over that party's activities; commission's jurisdiction must first be determined by the commission. 150 CA 1.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

Subsec. (a):

Subdiv. (4): Statute intended to apply only to that which is already in existence on residential property, including residence. 183 C. 532. Cited. 215 C. 616. Subdiv. (2): There is no as-of-right exemption from wetlands regulation under section for construction of houses on subdivision lots existing prior to July 1, 1974, unless a building permit had been issued for such lot prior to July 1, 1987. 229 C. 247. Subdiv. (1): The types of activities permitted as of right are limited to those enumerated in Subdiv. and corresponding town regulations, and do not include the filling of wetlands for the purpose of constructing roads. 302 C. 60. The plain language of the text, as evidenced by the legislature's sentence structure and use of punctuation, makes it clear that road construction directly related to farming operations is exempt from the regulatory oversight of municipal wetlands agencies. 322 C. 1.

Subdiv. (1): Regulation in effect at time of court decision is controlling. 18 CA 440. Cited. 20 CA 819; 24 CA 163. Re statutory limitation on farming exemption that prohibits “filling or reclamation of wetlands or watercourses with continual flow”, the phrase “with continual flow” applies only to watercourses, not to wetlands. 117 CA 630.

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Sec. 22a-41. Factors for consideration of commissioner. Finding of no feasible and prudent alternative. ~~Wetlands or watercourses~~ Wetlands, watercourses or riparian areas. Habitats. Jurisdiction of municipal inland wetlands agencies. (a) In carrying out the purposes and policies of sections 22a-36 to 22a-45a, inclusive, including matters relating to regulating, licensing and enforcing of the provisions thereof, the commissioner shall take into consideration all relevant facts and circumstances, including but not limited to:

- (1) The environmental impact of the proposed regulated activity on ~~wetlands or watercourses~~ wetlands, watercourses or riparian areas;
- (2) The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;
- (3) The relationship between the short-term and long-term impacts of the proposed regulated activity on ~~wetlands or watercourses~~ wetlands, watercourses or riparian areas and the maintenance and enhancement of long-term productivity of such ~~wetlands or watercourses~~ wetlands, watercourses or riparian areas;
- (4) Irreversible and irretrievable loss of ~~wetland or watercourse~~ wetland, watercourse or riparian resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources;
- (5) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
- (6) Impacts of the proposed regulated activity on ~~wetlands or watercourses~~ wetlands, watercourses or riparian areas outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.

(b) (1) In the case of an application which received a public hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the inland ~~wetlands wetlands, watercourses, and riparian protection~~ agency that the proposed activity may have a significant impact on ~~wetlands and waterecourses wetlands, watercourses or riparian areas~~, a permit shall not be issued unless the commissioner finds on the basis of the record that a feasible and prudent alternative does not exist. In making his finding, the commissioner shall consider the facts and circumstances set forth in subsection (a) of this section. The finding and the reasons therefor shall be stated on the record in writing.

(2) In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on ~~wetlands or waterecourses wetlands, watercourses or riparian areas~~, the commissioner or the inland ~~wetlands wetlands, watercourses, and riparian protection agency~~, as the case may be, shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subdivision shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity.

(c) For purposes of this section, (1) ~~"wetlands and waterecourses"~~ "wetlands, watercourses or riparian areas" includes aquatic, plant or animal life and habitats in ~~wetlands and waterecourses wetlands, watercourses, or riparian areas~~, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.

(d) A municipal inland ~~wetlands wetlands, watercourses, and riparian protection~~ agency shall not deny or condition an application for a regulated activity in an area outside ~~wetlands and waterecourses wetlands, watercourses, or riparian areas~~ on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such ~~wetlands and waterecourses wetlands, watercourses, or riparian areas~~.

(1972, P.A. 155, S. 6; P.A. 87-533, S. 4, 14; P.A. 96-157, S. 2; 96-269, S. 3, 4; P.A. 04-209, S. 1; P.A. 05-288, S. 94.)

History: P.A. 87-533 added Subsec. (b) requiring the commissioner to find that a feasible and prudent alternative does not exist prior to issuing a permit for an application which received a public hearing; P.A. 96-157 amended Subsec. (a) to modify the enumerated factors for consideration and amended Subsec. (b) to provide conditions for hearings governed by that subsection, to provide that findings re feasible and prudent alternatives be on the basis of the record and to add Subdiv. (2) re proposal of alternatives by the agency; P.A. 96-269 changed effective date of P.A. 96-157 from October 1, 1996, to January 1, 1997, effective June 12, 1996; P.A. 04-209 added new Subsec. (c) defining wetlands or watercourses and habitats and new Subsec. (d) re jurisdiction of municipal inland wetlands agencies, effective June 3, 2004; P.A. 05-288 made technical changes in Subsec. (b)(1), effective July 13, 2005.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67. Under statute, a local inland wetlands agency must take into account the environmental impact on the regulated area that is pertinent, not the environmental impact in general. 192 C. 247. Cited. 196 C. 218; 203 C. 525;

209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 222 C. 98; 226 C. 227; Id., 579; 228 C. 95; 229 C. 247; Id., 227; Id., 654; 242 C. 335.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 334; Id., 713; 20 CA 309; 21 CA 122; 24 CA 708; 25 CA 446; Id., 572; 26 CA 564; 27 CA 214; Id., 590; 28 CA 262; Id., 435; Id., 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166; 43 CA 227. Although the act protects the physical characteristics of wetlands and not wildlife, there was substantial evidence in the record that the loss of wood frogs would have a negative consequential effect on the physical characteristics of the wetlands, which falls squarely within the commission's jurisdiction. 122 CA 644. Inland wetlands, watercourses, and riparian areas commission did not have to reconsider enumerated factors when considering a modified application because it had already considered the factors in approving the original application. 124 CA 489.

Cited. 35 CS 145. Section does not mandate specific reference in the finding and conclusion to any one of the 6 factors or a "balancing test". 36 CS 1. Cited. 41 CS 444; 42 CS 57.

Subsec. (a):

Subdiv. (4): Mitigation measures are an integral component in the process of approving a permit that seeks to destroy wetland or watercourse resources; trial court improperly concluded that inland wetlands commission could accept payment of money and in-kind services as mitigation for destruction of wetlands and since the condition of the payment of money and provision of in-kind services was integral to commission's decision to grant the permit, judgment of trial court was reversed and the case remanded with direction to sustain the appeal. 251 C. 269. Local wetlands, watercourses, and riparian areas commission, in considering application for permit to conduct a regulated activity, must consider, among other things, any feasible and prudent alternatives to the proposed activity that would cause less or no environmental impact to wetlands or watercourses. 263 C. 572. It is the impact on the regulated area that is pertinent, not the environmental impact in general; inland wetlands agencies do not have jurisdiction to regulate activities that solely affect the wildlife that use the wetlands, watercourses, and riparian areas without affecting the wetlands or watercourses themselves. 269 C. 57.

"All relevant facts" does not include adjacent land when proposed development does not have a significant impact on the wetlands, watercourses, and riparian areas. 49 CA 95. Subdiv. (2): Requirement that applicant present feasible and prudent alternatives to proposed regulated activity is mandatory rather than directory. 183 CA 280.

Subsec. (b):

Subdiv. (2): Requirement that applicant present feasible and prudent alternatives to proposed regulated activity is mandatory rather than directory. 183 CA 280.

Subsec. (d):

Only inland wetlands commission may make factual determination of whether physical characteristics of the wetlands are impacted and commission cannot make such determination without information about wildlife; there was substantial evidence to support finding that application that omitted information about wildlife was incomplete. 293 C. 93.

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Sec. 22a-42. Municipal regulation of ~~wetlands and watercourses~~ wetlands, watercourses, and riparian areas. Action by commissioner. (a) To carry out and effectuate the purposes and policies of sections 22a-36 to 22a-45a, inclusive, it is hereby declared to be the public policy of the state to require municipal regulation of activities affecting the ~~wetlands and watercourses~~ wetlands, watercourses, and riparian areas within the territorial limits of the various municipalities or districts.

(b) Any municipality may acquire ~~wetlands and watercourses~~ wetlands, watercourses, and riparian areas within its territorial limits by gift or purchase, in fee or lesser interest including, but not limited to, lease, easement or covenant, subject to such reservations and exceptions as it deems advisable.

(c) On or before July 1, 1988, each municipality shall establish an inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency or authorize an existing board or commission to carry out the provisions of sections 22a-36 to 22a-45, inclusive. Each municipality, acting through its legislative body, may authorize any board or commission, as may be by law authorized to act, or may establish a new board or commission to promulgate such regulations, in conformity with the regulations adopted by the commissioner pursuant to section 22a-39, as are necessary to protect the ~~wetlands and watercourses~~ wetlands, watercourses, and riparian areas within its territorial limits. The ordinance establishing the new board or commission shall determine the number of members and alternate members, the length of their terms, the method of selection and removal and the manner for filling vacancies in the new board or commission. No member or alternate member of such board or commission shall participate in the hearing or decision of such board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of such board or commission and replacement shall be made from alternate members of an alternate to act as a member of such commission in the hearing and determination of the particular matter or matters in which the disqualification arose. For the purposes of this section, the board or commission authorized by the municipality or district, as the case may be, shall serve as the sole agent for the licensing of regulated activities.

(d) At least one member of the inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency or staff of the agency shall be a person who has completed the comprehensive training program developed by the commissioner pursuant to section 22a-39. Failure to have a member of the agency or staff with training shall not affect the validity of any action of the agency. The commissioner shall annually make such program available to one person from each town without cost to that person or the town. Each ~~inland wetlands such~~ agency shall hold a meeting at least

once annually at which information is presented to the members of the agency which summarizes the provisions of the training program. The commissioner shall develop such information in consultation with interested persons affected by the regulation of inland wetlands and shall provide for distribution of video presentations and related written materials which convey such information to inland wetlands agencies. In addition to such materials, the commissioner, in consultation with such persons, shall prepare materials which provide guidance to municipalities in carrying out the provisions of subsection (f) of section 22a-42a.

(e) Any municipality, pursuant to ordinance, may act through the board or commission authorized in subsection (c) of this section to join with any other municipalities in the formation of a district for the regulation of activities affecting the ~~wetlands and watercourses wetlands, watercourses, and riparian areas~~ within such district. Any city or borough may delegate its authority to regulate inland wetlands under this section to the town in which it is located.

(f) Municipal or district ordinances or regulations may embody any regulations promulgated hereunder, in whole or in part, or may consist of other ordinances or regulations in conformity with regulations promulgated hereunder. Any ordinances or regulations shall be for the purpose of effectuating the purposes of sections 22a-36 to 22a-45, inclusive, and, a municipality or district, in acting upon ordinances and regulations shall incorporate the factors set forth in section 22a-41.

(g) Nothing contained in this section shall be construed to limit the existing authority of a municipality or any boards or commissions of the municipality, provided the commissioner shall retain authority to act on any application filed with said commissioner prior to the establishment or designation of an inland ~~wetlands wetlands, watercourses, and riparian protection~~ agency by a municipality.

(1972, P.A. 155, S. 7; P.A. 73-571, S. 3, 9; P.A. 74-133; P.A. 87-533, S. 5, 14; P.A. 96-157, S. 3; 96-269, S. 3, 4.)

History: P.A. 73-571 clarified provisions, included districts as well as municipalities under provisions, specified that ordinance establishing board or commission should determine number of members, length of terms, etc. in Subsec. (c) and added Subsec. (f)(2) re commissioner's power to protect wetlands and watercourses if municipality does not exercise its regulatory authority; P.A. 74-133 added provisions re disqualification of members from participation in hearing or decision in which they are directly or indirectly personally or financially involved and selection of alternate in such cases under Subsec. (c); P.A. 87-533 amended Subsec. (a) to require rather than encourage municipal regulation of inland wetlands, amended Subsec. (c) to require all municipalities to establish inland wetlands agencies on or before July 1, 1988, amended Subsec. (d) to authorize towns or boroughs to delegate authority to regulate inland wetlands to the towns in which they are located, deleted former Subsec. (f) re state regulation of inland wetlands, relettering former Subsec. (g) as (f) and adding proviso re commissioner's authority to act on applications filed prior to designation of municipal agency; P.A. 96-157 inserted new Subsec. (d) re training of agency or staff and relettered former subsequent Subsecs. and amended Subsec. (f) to require incorporation of the factors for consideration set forth in Sec.

22a-41 in the agency's regulations or ordinances; P.A. 96-269 changed effective date of P.A. 96-157 from October 1, 1996, to January 1, 1997, effective June 12, 1996.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 192 C. 247; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 222 C. 98; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 231 C. 451; 242 C. 335.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; Id., 643; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

Subsec. (c):

Cited. 24 CA 708. Disqualification applies to ex officio members. 50 CA 548. Defendant board of zoning appeals had subject matter jurisdiction over petition for a variance from town zoning regulations for construction in close proximity to inland wetlands. 149 CA 115.

Cited. 43 CS 373. Once a municipality has established an agency to regulate activities affecting wetlands and watercourses within its territorial limits in accordance with section, such agency is not subject to interference by municipality's legislative body; Inland Wetlands and Watercourses Act requires that agency created pursuant to the act be sole agent for licensing of regulated activities in the municipality. 49 CS 188.

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Sec. 22a-42a. Establishment of boundaries by regulation. Adoption of regulations. Permits. Filing fee. (a) The inland wetlands agencies authorized in section 22a-42 shall through regulation provide for (1) the manner in which the boundaries of inland wetland and watercourse wetland, watercourse and riparian areas in their respective municipalities shall be established and amended or changed, (2) the form for an application to conduct regulated activities, (3) notice and publication requirements, (4) criteria and procedures for the review of applications, and (5) administration and enforcement.

(b) No regulations of an inland wetland wetlands, watercourses, and riparian protection agency including boundaries of inland wetland and watercourse wetland, watercourse, and riparian areas shall become effective or be established until after a public hearing in relation thereto is held by the inland wetlands agency. Any such hearing shall be held in accordance with the provisions of section 8-7d. A copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk as the case may be, in such municipality, for public inspection at least ten days before such hearing, and may be published in full in such paper. A copy of the notice and the proposed regulations or amendments thereto, except determinations of boundaries, shall be provided to the commissioner at least thirty-five days before such hearing. Such

regulations and inland ~~wetland and watercourse~~ wetland, watercourse, and riparian boundaries may be from time to time amended, changed or repealed, by majority vote of the inland ~~wetland wetlands, watercourses, and riparian protection~~ agency, after a public hearing in relation thereto is held by the inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency, in accordance with the provisions of section 8-7d. Regulations or boundaries or changes therein shall become effective at such time as is fixed by the ~~inland wetlands~~ agency, provided a copy of such regulation, boundary or change shall be filed in the office of the town, city or borough clerk, as the case may be. Whenever an ~~inland wetlands~~ agency makes a change in regulations or boundaries it shall state upon its records the reason why the change was made and shall provide a copy of such regulation, boundary or change to the Commissioner of Energy and Environmental Protection no later than ten days after its adoption provided failure to submit such regulation, boundary or change shall not impair the validity of such regulation, boundary or change. All petitions submitted in writing and in a form prescribed by the ~~inland wetlands~~ agency, requesting a change in the regulations or the boundaries of an inland ~~wetland and watercourse~~ wetland, watercourse, or riparian area shall be considered at a public hearing held in accordance with the provisions of section 8-7d. The failure of the ~~inland wetlands~~ agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the petition.

(c) (1) On and after the effective date of the municipal regulations promulgated pursuant to subsection (b) of this section, no regulated activity shall be conducted upon any inland ~~wetland or watercourse~~ wetland, watercourse, or riparian area without a permit. Any person proposing to conduct or cause to be conducted a regulated activity upon an inland ~~wetland or watercourse~~ wetland, watercourse, or riparian area shall file an application with the inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency of the town or towns wherein the ~~wetland or watercourse~~ wetland, watercourse, or riparian area in question is located. The application shall be in such form and contain such information as the ~~inland wetlands~~ agency may prescribe. The date of receipt of an application shall be determined in accordance with the provisions of subsection (c) of section 8-7d. The ~~inland wetlands~~ agency shall not hold a public hearing on such application unless the ~~inland wetlands~~ agency determines that the proposed activity may have a significant impact on ~~wetlands or watercourses~~ wetlands, watercourses, or riparian areas, a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the agency not later than fourteen days after the date of receipt of such application, or the agency finds that a public hearing regarding such application would be in the public interest. An inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency may issue a permit without a public hearing provided no petition provided for in this subsection is filed with the agency on or before the fourteenth day after the date of receipt of the application. Such hearing shall be held in accordance with the provisions of section 8-7d. If the ~~inland wetlands~~ agency, or its agent, fails to act on any application within thirty-five days after the completion of a public hearing or in the absence of a public hearing within sixty-five days from the date of receipt of the application, or within any extension of any such period as provided in section 8-7d, the applicant may file such application with the Commissioner of Energy and Environmental Protection who shall review and act on such application in accordance with this section. Any costs incurred by the commissioner in reviewing such application for such ~~inland wetlands~~ agency shall be paid by the municipality that established or authorized the agency. Any fees that would have been paid to

such municipality if such application had not been filed with the commissioner shall be paid to the state. The failure of the ~~inland wetlands~~ agency or the commissioner to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application.

(2) An inland ~~wetlands a wetlands, watercourses, and riparian protection~~ agency may delegate to its duly authorized agent the authority to approve or extend an activity that is ~~not~~ located in a ~~wetland or watercourse wetland, watercourse, or riparian area~~ when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any ~~wetland or watercourse wetland, watercourse, or riparian area~~ provided such agent has completed the comprehensive training program developed by the commissioner pursuant to section 22a-39. Notwithstanding the provisions for receipt and processing applications prescribed in subdivision (1) of this subsection, such agent may approve or extend such an activity at any time. Any person receiving such approval from such agent shall, within ten days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the inland wetlands agency within fifteen days after the publication date of the notice and the inland wetlands agency shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such agency or its agent of such appeal. The ~~inland wetlands~~ agency shall, at its discretion, sustain, alter or reject the decision of its agent or require an application for a permit in accordance with subdivision (1) of subsection (c) of this section.

(d) (1) In granting, denying or limiting any permit for a regulated activity the inland ~~wetlands wetlands, watercourses, and riparian protection~~ agency, or its agent, shall consider the factors set forth in section 22a-41, and such agency, or its agent, shall state upon the record the reason for its decision. In granting a permit the inland wetlands agency, or its agent, may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of sections 22a-36 to 22a-45, inclusive. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive ~~wetland or watercourse wetland, watercourse, or riparian~~ resources. Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the ~~inland wetlands~~ agency, or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45, inclusive. No person shall conduct any regulated activity within an inland ~~wetland or watercourse wetland, watercourse, or riparian area~~ which requires zoning or subdivision approval without first having obtained a valid certificate of zoning or subdivision approval, special permit, special exception or variance or other documentation establishing that the proposal complies with the zoning or subdivision requirements adopted by the municipality pursuant to chapters 124 to 126, inclusive, or any special act. The agency may suspend or revoke a permit if it finds after giving notice to the permittee of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as

set forth in the application. The applicant shall be notified of the agency's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town wherein the wetland or watercourse wetland, watercourse, or riparian area lies. In any case in which such notice is not published within such fifteen-day period, the applicant may provide for the publication of such notice within ten days thereafter.

(2) Any permit issued under this section for the development of property for which an approval is required under chapter 124, 124b, 126 or 126a shall be valid until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued under this section for any activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit may be valid for more than ten years.

(e) The inland wetland wetlands, watercourses, and riparian protection agency may require a filing fee to be deposited with the agency. The amount of such fee shall be sufficient to cover the reasonable cost of reviewing and acting on applications and petitions, including, but not limited to, the costs of certified mailings, publications of notices and decisions and monitoring compliance with permit conditions or agency orders.

(f) If a municipal inland wetlands wetlands, watercourses, and riparian protection agency regulates activities within areas around wetlands or watercourses wetlands, watercourses or riparian areas, such regulation shall (1) be in accordance with the provisions of the inland wetlands regulations adopted by such agency related to application for, and approval of, activities to be conducted in wetlands or watercourses wetlands, watercourses, or riparian areas and (2) apply only to those activities which are likely to impact or affect wetlands or watercourses.

~~(g) Notwithstanding the provisions of subdivision (2) of subsection (d) of this section, any permit issued under this section prior to July 1, 2011, that has not expired prior to May 9, 2011, shall expire not less than nine years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances that requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no such permit shall be valid for more than fourteen years.~~

(P.A. 73-571, S. 4, 9; P.A. 75-387, S. 1; P.A. 77-599, S. 3, 7; P.A. 79-285, S. 1, 2; P.A. 81-125, S. 2; P.A. 83-109; P.A. 87-533, S. 6, 14; P.A. 89-356, S. 16; P.A. 92-148, S. 1, 2; P.A. 93-305; P.A. 95-313, S. 3; P.A. 96-157, S. 4; 96-269, S. 3, 4; P.A. 97-124, S. 10, 16; P.A. 98-209, S. 16; P.A. 99-225, S. 16, 33; P.A. 03-177, S. 11, 12; 03-276, S. 6; P.A. 09-181, S. 3; P.A. 11-5, S. 4; P.A. 11-80, S. 1; P.A. 12-151, S. 1.)

History: P.A. 75-387 specified in Subsec. (b) that amendment or repeal of regulations takes place only after public hearing is held, moved upper limit for hearing date from 60 to 65 days after receipt of application and required that action be taken within 65 rather than 45 days after completion of hearing in Subsec. (c), and required that applicant be notified of decision within 15 rather than 5 days after decision reached in Subsec. (d); P.A. 77-599 required that commissioner be sent a copy of changed regulations, boundaries, etc. in Subsec. (b) and a copy of permits or orders issued in Subsec. (d) and required that reasons for a decision be included in the record; P.A. 79-285 required publication of notice twice rather than once and set standards for times of posting and added Subsec. (e) re filing fee; P.A. 81-125 added the word "watercourse" after each use of the words "inland wetland" for consistency with other sections of the chapter; P.A. 83-109 amended Subsec. (c) by establishing the day of receipt of applications for permits to conduct a regulated activity upon an inland wetlands or watercourse; P.A. 87-533 amended Subsec. (a) to require regulations on forms for an application notice and publication requirements, criteria and procedures for review and administrative and enforcement, amended Subsec. (b) to require notice to the commissioner before a public hearing and to delete provision which had authorized imposition of filing fee, amended Subsec. (c) to require that public hearing be completed 45 days after commencement and to reduce time for action on applications from 65 to 35 days, amended Subsec. (d) to require zoning compliance before regulated activity is conducted in an inland wetland and to delete provision requiring sending of copy of permit and order to commissioner within 10 days of issuance and amended Subsec. (e) to authorize municipalities to charge filing fees sufficient to cover the reasonable cost of reviewing and acting on applications; P.A. 89-356 amended Subsec. (b) to authorize the petitioner to consent to more than one extension of the periods specified for the holding of the hearing and for action on the petition provided the total extension is not for longer than the original period and to add provision that the failure of the agency to act in a timely manner shall not be deemed to constitute approval of the petition, amended Subsec. (c) to add provisions authorizing the applicant to consent to one or more extensions of the time periods for agency action, provided the total extension is not for longer than the original period, or to withdraw the application, authorizing the applicant to file the application with the commissioner of environmental protection for review and action if the agency fails to act within specified time periods or any extension thereof, specifying that the costs of the review by the commissioner shall be paid by the municipality and that fees otherwise payable to the municipality shall be paid to the state, and specifying that the failure of the agency or commissioner to act in a timely manner shall not be deemed to constitute approval of the application, and amended Subsec. (d) to authorize the applicant to provide for the publication of the notice of the decision of the agency when such notice is not published in a timely manner; P.A. 92-148 amended Subsec. (b) to change the required time of the first newspaper advertisement for a hearing under that Subsec. to not more than 15 days nor less than 10 days before such hearing, reducing time frame by 10 days, and amended Subsec. (d) to provided for specific time limits for permits issued under that Subsec; P.A. 93-305 amended Subsec. (d) to modify the authority of wetlands agencies re expiration dates of permits and time required for completion of regulated activities; P.A. 95-313 added Subsec. (f) re buffer areas; P.A. 96-157 amended Subsec. (c) to create Subdivs. (1) and (2), amended Subdiv. (1) to condition the holding of public hearings on applications and added Subdiv. (2) to provide for delegation by the agency of certain authority to an agent, amended Subsec. (d) to create Subdivs. (1) and (2) and amended Subdiv. (1) to include references to action by the agent, to provide for terms for permits, deleted provisions re time periods for

permits and added Subdiv. (2) re time periods for permits, and amended Subsec. (f) to delete a reference to “buffer” areas and to include references to watercourses; P.A. 96-269 changed effective date of P.A. 96-157 from October 1, 1996, to January 1, 1997, effective June 12, 1996 (Revisor's note: Due to a clerical error in Subsec. (c)(1) the words “... impact on wetlands or watercourses, a petition signed ...” were incorrectly printed in the original engrossed bill version of P.A. 96-157 as “... impact on wetlands, watercourses or a petition signed ...”); P.A. 97-124 amended Subsec. (c) to modify the time period for making a request for a public hearing, to exempt the actions of an agent of the municipal agency from certain time period requirements and to make technical changes, effective June 6, 1997; P.A. 98-209 amended Subsec. (c) to add additional provision for issuance of a permit without a public hearing; P.A. 99-225 amended Subsec. (c)(1) to modify the deadline for receipt of a petition for a public hearing on applications under this section, effective June 29, 1999; P.A. 03-177 amended Subsec. (b) by eliminating provisions re public hearing notice and procedure and the time for an inland wetlands agency to render a decision on a petition and adding provisions requiring public hearing to be conducted in accordance with Sec. 8-7d, and amended Subsec. (c)(1) by replacing provisions re determination of date of receipt of application, public hearing notice and procedure and the time for rendering a decision with provisions requiring public hearing to be conducted in accordance with Sec. 8-7d, effective October 1, 2003, and applicable to applications filed on or after that date; P.A. 03-276 amended Subsec. (c)(1) to add age and residency requirements for persons who sign a petition, effective July 1, 2003; P.A. 09-181 added Subsec. (g) re permits issued during period from July 1, 2006, to July 1, 2009, effective July 2, 2009; P.A. 11-5 amended Subsec. (g) to apply to any permit issued prior to July 1, 2011, that has not expired prior to May 9, 2011, and to provide that such permits shall expire not less than 9 years after approval date and shall be valid for not more than 14 years, effective May 9, 2011; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” in Subsecs. (b) and (c)(1), effective July 1, 2011; P.A. 12-151 amended Subsec. (d) by adding provision in Subdiv. (1) authorizing restrictions re time of year in which regulated activity may be conducted and, in Subdiv. (2), by substituting “chapter 124, 124b, 126 or 126a” for “section 8-3, 8-25 or 8-26”, by changing length of time in which permit is valid from 5 years to “until the approval granted under such chapter expires or for ten years, whichever is earlier” and by replacing “other activity” with “activity for which an approval is not required under chapter 124, 124b, 126 or 126a”.

See Sec. 7-159b re preapplication review of use of property.

Cited. 179 C. 250; 180 C. 421; Id., 692; 186 C. 67; 192 C. 247; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 222 C. 98; Id., 541; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 231 C. 451; 242 C. 335. Site inspection was not a “hearing” requiring stringent notice requirement of statute. 243 C. 266.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 21 CA 122; Id., 131; 24 CA 708; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; Id., 643; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166; 43 CA 227.

Cited. 41 CS 444; 42 CS 57.

Subsec. (c):

Cited. 183 C. 532. Time limits directory not mandatory. 222 C. 269.

Cited. 25 CA 61; Id., 164; 35 CA 317; 41 CA 39; Id., 89; Id., 120. Purpose of hearing under Subdiv. (1); site inspections are not hearings. 49 CA 95.

Subsec. (d):

Requirement of stating upon the record the reason for its decision is met by commission's statement of the factors upon which it relied. 180 C. 692. Trial court on appeal must search record of hearings before commission to determine if an adequate reason exists for its decision. 213 C. 604.

Cited. 19 CA 334; 27 CA 214; 29 CA 469; 41 CA 421; judgment reversed, see 242 C. 550.

Subsec. gives commission explicit authority to place conditions, modifications or limitations on the granting of a permit application and does not attempt to limit such conditions in any way; whether proposed use is an "as of right use" under regulations and statutes has no relevance to whether commission may condition approval of a permit application on the posting of a bond. 114 CA 695. Subdiv. (1) requires consideration of the factors enumerated in Sec. 22a-41 when issuing a permit to conduct regulated activities and not when considering an application to modify one condition on a permit that was already approved. 124 CA 489.

Subsec. (f):

Commission may regulate activities impacting the physical characteristics of wetlands and watercourses, but no other aspects, such as wildlife or biodiversity. 266 C. 150.

Inland wetlands commission, under section, must first enact a formal regulation to exercise its authority over upland review areas. 79 CA 710. A regulated activity may include an activity that occurs in nonwetland areas, but that will affect wetland areas. 122 CA 644. Municipal inland wetlands regulations need not explicitly reference stormwater impacts in order for inland wetlands commission to regulate such impacts and related activities affecting adjacent wetlands and watercourses. 148 CA 91.

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Secs. 22a-42b and 22a-42c. Notice to adjoining municipalities when traffic, sewer or water drainage and water runoff will affect such municipalities. Notice of application to adjacent municipality re conduct of regulated activities within five hundred feet of its boundaries. Sections 22a-42b and 22a-42c are repealed, effective October 1, 2003.

(P.A. 87-307, S. 4; 87-533, S. 12, 14; P.A. 88-364, S. 34, 123; P.A. 89-175, S. 6, 7; P.A. 96-118, S. 4; P.A. 03-177, S. 14.)

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Sec. 22a-42d. Revocation of authority to regulate inland ~~wetlands wetlands, watercourses and riparian areas~~. (a) The commissioner may revoke the authority of a municipality to regulate inland ~~wetlands wetlands, watercourses, or riparian areas~~ pursuant to section 22a-42 upon determination after a hearing that such municipality has, over a period of time, consistently failed to perform its duties under said section. Prior to the hearing on revocation, the commissioner shall send a notice to the ~~inland wetlands, watercourses, and riparian protection agency~~, by certified mail, return receipt requested, asking such agency to show cause, within thirty days, why such authority should not be revoked. A copy of the show cause notice shall be sent to the chief executive officer of the municipality that authorized the agency. The commissioner shall send a notice to the ~~inland wetlands~~ agency, by certified mail, return receipt requested, stating the reasons for the revocation and the circumstances for reinstatement. Any municipality aggrieved by a decision of the commissioner under this section to revoke its authority under said section 22a-42 may appeal therefrom in accordance with the provisions of section 4-183. The commissioner shall have jurisdiction over the inland ~~wetlands wetlands, watercourses, and riparian areas~~ in any municipality whose authority to regulate such inland ~~wetlands wetlands, watercourses and riparian areas~~ has been revoked. Any costs incurred by the state in reviewing applications for inland ~~wetlands wetland, watercourse, or riparian area~~ activity for such municipality shall be paid by the municipality. Any fees that would have been paid to such municipality if such authority had been retained shall be paid to the state.

(b) The commissioner shall cause to be published notice of the revocation or reinstatement of the authority of a municipality to regulate inland wetlands in a newspaper of general circulation in the area of such municipality.

(c) The commissioner shall adopt regulations in accordance with the provisions of chapter 54 establishing standards for the revocation and reinstatement of municipal authority to regulate wetlands pursuant to section 22a-42.

(P.A. 87-533, S. 13, 14; P.A. 88-364, S. 35, 123.)

History: P.A. 88-364 made a technical change to Subsec. (a).

Cited. 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 335.

Cited. 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 41 CS 444; 42 CS 57.

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Sec. 22a-42e. Application filed prior to change in inland wetlands regulations not required to comply with change. Exceptions. An application filed with an inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetlands regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of such agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of this chapter as of the date of such receipt.

(P.A. 89-311, S. 3; 89-356, S. 17; P.A. 96-157, S. 5; 96-269, S. 3, 4.)

History: P.A. 89-356 provided that such application shall not be required to comply with subsequent “changes to setbacks and buffers”, deleted provision that such application shall not be required to comply with any subsequent change in inland wetlands “boundaries”, and added provision that the section shall not be construed to apply to the establishment, amendment or change of boundaries of inland wetlands or watercourses or any change in regulations necessary to make such regulations consistent with the provisions of chapter 440 as of the date of such decision; P.A. 96-157 changed the date for determining an application's compliance with the law from the date of the decision of the agency to the date the agency receives the application; P.A. 96-269 changed effective date of P.A. 96-157 from October 1, 1996, to January 1, 1997, effective June 12, 1996.

Cited. 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; Id., 527; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355.

Cited. 25 CA 51; Id., 199; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 622; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 42 CS 57.

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Sec. 22a-42f. Notice of application to water company re conduct of regulated activities within watershed of water company. When an application is filed to conduct or cause to be conducted a regulated activity upon an inland ~~wetland or watercourse~~ wetland, watercourse, or riparian area,

any portion of which is within the watershed of a water company as defined in section 25-32a, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland **wetlands, watercourses, and riparian protection** agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application.

(P.A. 89-301, S. 1; P.A. 90-230, S. 72, 101; P.A. 91-300, S. 2; P.A. 06-53, S. 2.)

History: P.A. 90-230 corrected an omission; P.A. 91-300 changed the statutory definition of water company by changing the statutory definition reference from Sec. 16-1 to Sec. 25-32a; P.A. 06-53 required Commissioner of Public Health to receive notice of proposed regulated activity upon an inland wetland or watercourse within water company watershed, gave commissioner right to appear and be heard at hearing on any such proposed regulated activity and made technical changes.

Cited. 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355.

Cited. 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 42 CS 57.

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Sec. 22a-42g. Municipal fine for violation of wetlands regulations. (a) Any municipality may establish, by ordinance, a fine for violations of regulations adopted pursuant to section 22a-42 provided the amount of any such fine shall be not more than one thousand dollars and further provided no such fine may be levied against the state or any employee of the state acting within the scope of his employment.

(b) Any police officer or other person authorized by the chief executive officer of the municipality may issue a citation to any person who commits such a violation. Any municipality which adopts an ordinance pursuant to subsection (a) of this section shall also adopt a citation hearing procedure pursuant to section 7-152c by which procedure such fine shall be imposed.

(c) Any fine collected by a municipality pursuant to this section shall be deposited into the General Fund of the municipality or in any special fund designated by the municipality.

(P.A. 96-269, S. 1.)

Cited. 242 C. 335.

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Sec. 22a-43. Appeals. (a) The commissioner or any person aggrieved by any regulation, order, decision or action made pursuant to sections 22a-36 to 22a-45, inclusive, by the commissioner, a district or municipality or any person owning or occupying land which abuts any portion of land within, or is within a radius of ninety feet of, the ~~wetland or watercourse~~ wetland, watercourse, or riparian area involved in any regulation, order, decision or action made pursuant to said sections may, within the time specified in subsection (b) of section 8-8, from the publication of such regulation, order, decision or action, appeal to the superior court for the judicial district where the land affected is located, and if located in more than one judicial district to the court in any such judicial district. Such appeal shall be made returnable to the court in the same manner as that prescribed for civil actions brought to the court, except that the record shall be transmitted to the court within the time specified in subsection (i) of section 8-8. If the ~~inland wetlands~~ agency or its agent does not provide a transcript of the stenographic or the sound recording of a meeting where the ~~inland wetlands~~ agency or its agent deliberates or makes a decision on a permit for which a public hearing was held, a certified, true and accurate transcript of a stenographic or sound recording of the meeting prepared by or on behalf of the applicant or any other party shall be admissible as part of the record. Notice of such appeal shall be served upon the inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency and the commissioner, provided, for any such appeal taken on or after October 1, 2004, service of process for purposes of such notice to the ~~inland wetlands~~ agency shall be made in accordance with subdivision (5) of subsection (b) of section 52-57. The commissioner may appear as a party to any action brought by any other person within thirty days from the date such appeal is returned to the court. The appeal shall state the reasons upon which it is predicated and shall not stay proceedings on the regulation, order, decision or action, but the court may on application and after notice grant a restraining order. Such appeal shall have precedence in the order of trial.

(b) The court, upon the motion of the person who applied for such order, decision or action, shall make such person a party defendant in the appeal. Such defendant may, at any time after the return date of such appeal, make a motion to dismiss the appeal. At the hearing on such motion to dismiss, each appellant shall have the burden of proving such appellant's standing to bring the appeal. The court may, upon the record, grant or deny the motion. The court's order on such motion may be appealed in the manner provided in subsection (p) of section 8-8.

(c) The proceedings of the court in the appeal may be stayed by agreement of the parties when a mediation conducted pursuant to section 8-8a commences. Any such stay shall terminate upon conclusion of the mediation.

(d) No appeal taken under subsection (a) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the Superior Court and the court has approved such proposed withdrawal or settlement.

(e) There shall be no right to further review except to the Appellate Court by certification for review in accordance with the provisions of subsection (o) of section 8-8.

(1972, P.A. 155, S. 8; P.A. 73-571, S. 5, 9; P.A. 76-436, S. 461, 681; P.A. 77-603, S. 13, 125; P.A. 78-280, S. 1, 127; P.A. 84-227, S. 3; P.A. 87-338, S. 8, 11; P.A. 89-356, S. 9; P.A. 91-136; P.A. 95-151, S. 1; P.A. 96-180, S. 76, 166; P.A. 00-108, S. 1; P.A. 01-47, S. 3; 01-195, S. 173, 181; P.A. 02-132, S. 66; P.A. 04-78, S. 2; P.A. 17-48, S. 19.)

History: P.A. 73-571 provided that appeals be made within 15 days after publication of regulation, order, etc. rather than in accordance with Secs. 4-166 to 4-184 of the 1971 supplement to statutes, added provisions clarifying nature and effect of appeal and deleted Subsecs. (b) and (c) re assessment of damages and allotment of court costs and re power of commissioner, district or municipality to purchase land and contract with landowners; P.A. 76-436 replaced court of common pleas with superior court and added reference to judicial districts, effective July 1, 1978; P.A. 77-603 amended appeal provisions to specify that in contested cases appeals shall conform to Sec. 4-183 and to clarify venue; P.A. 78-280 deleted references to counties; P.A. 84-227 added Subsec. (b) re a hearing on a motion to dismiss the appeal made by the person who applied for the order, decision or action where each appellant has the burden of proving his standing to bring the appeal, and added Subsec. (c) re a prohibition on withdrawal or settlement without court approval; P.A. 87-338 amended Subsec. (a) to authorize appeals by the commissioner or persons owning or occupying abutting land and to authorize the commissioner to appear as a party to actions brought by other persons; P.A. 89-356 amended Subsec. (a) to replace provision that aggrieved person or abutter "may, within fifteen days after publication of such regulation, order, decision or action appeal to the superior court for the judicial district where the land affected is located, and if located in more than one judicial district, to said court in any such judicial district, except if such appeal is from a contested case, as defined in section 4-166, such appeal shall be in accordance with the provisions of section 4-183" with "may appeal to the superior court in accordance with the provisions of section 4-183"; P.A. 91-136 deleted language that appeal to superior court be in accordance with Sec. 4-183 and substituted language that appeal be taken within the time specified in Subdiv. (b) of such regulation, order, decision or action; P.A. 95-151 amended Subsec. (b) and added Subsec. (d) to provide for appeal of Superior Court's decision in manner provided for appeal of court decisions re zoning appeals; P.A. 96-180 amended Subsec. (d) to change "right of further review" to "right to further review", effective June 3, 1996; P.A. 00-108 amended Subsec. (a) to make a technical change and add provision re transcripts of meetings; P.A. 01-47 amended Subsecs. (a), (b) and (d) by making technical changes, including changes for purposes of gender neutrality; P.A. 01-195 amended Subsec. (a) to substitute "portion of land within" for "portion of land" and make technical changes, effective July 11, 2001; P.A. 02-132 added new Subsec. (c) re stay of appeal upon commencement of mediation pursuant to Sec. 8-8a, redesignated existing Subsecs. (c) and (d) as Subsecs. (d) and (e) and made technical changes in Subsec. (a) and redesignated Subsec. (d); P.A. 04-78 amended Subsec. (a) by adding provision re requirements for service for purposes of notice to inland wetlands agency applicable to appeals taken on or after October 1, 2004; P.A. 17-48 amended Subsec. (e) to replace reference to Sec. 8-8(p) with reference to Sec. 8-8(o).

Rule that party who seeks advantage under a statute or ordinance is precluded from subsequently attacking validity raises question that claim could properly be litigated by appeal; jurisdictional

claims are appropriate for resolution by declaratory judgment. 178 C. 173. Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 212 C. 710; Id., 727; 213 C. 604; 215 C. 616; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 54; Id., 362; Id., 476; 221 C. 46; 222 C. 98; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355. Intervenors before inland wetlands commission pursuant to Sec. 22a-19 were entitled to appeal to trial court from commission's decision; plaintiffs' allegations that regulated activities allowed by permit granted to applicant by inland wetlands commission would have specific "deleterious effect" and "impact" on environmental resources were sufficient to withstand a motion to dismiss for lack of standing. 289 C. 12.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 7 CA 283; 12 CA 47; 15 CA 336; 18 CA 440. Exception clause applied to state agencies only. 19 CA 713. Cited. 20 CA 309; 24 CA 163; Id., 708; 25 CA 164; Id., 543; judgment reversed, see 222 C. 541; 26 CA 564; 27 CA 214; Id., 590; 28 CA 262; Id., 435; Id., 780; 29 CA 12; Id., 105; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166; 43 CA 239.

Cited. 35 CS 145; 36 CS 1; 41 CS 184; Id., 444; 42 CS 57.

Subsec. (a):

Related service of notice on commissioner is not defect that flaws subject matter jurisdiction. 211 C. 416. Cited. 222 C. 541; 242 C. 335.

Provisions govern appeals from commission to Superior Court, not proceedings before commission. 30 CA 85. Cited. 31 CA 155. Trial court properly dismissed plaintiff's appeal from decision of municipal conservation commission as the service of process requirements set forth in Sec. 8-8(f) applied to zoning appeals taken prior to October 1, 2004, and consequently plaintiff was required to serve process on commission's chairperson. 101 CA 238. "Publish" and "publication" are not interchangeable terms under Subsec., and although commission did not "publish" notice of its order in a newspaper, "publication" was accomplished; Sec. 22a-44, rather than this section, applies to cease and desist orders. 114 CA 695.

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Sec. 22a-43a. Findings on appeal. Setting aside, modifying or remanding action. Authority to purchase land. (a) The court, after a hearing, may reverse or affirm, wholly or partly, or may revise, modify or remand the decision from which the appeal was taken in a manner consistent with the evidence in the record before it. If upon appeal pursuant to section 22a-43, the court finds that the action appealed from constitutes the equivalent of a taking without compensation, the court (1) shall set aside the action or may modify the action so that it does not constitute a taking, and (2) shall remand the order to the inland wetland agency for action not inconsistent with its decision.

(b) To carry out the purposes of sections 22a-38, 22a-40, 22a-42 to 22a-43a, inclusive, 22a-401 and 22a-403, the commissioner, district or municipality may at any time purchase land or an

interest in land in fee simple or other acceptable title, or subject to acceptable restrictions or exceptions, and enter into covenants and agreements with landowners.

(P.A. 73-571, S. 6, 9; P.A. 15-85, S. 3.)

History: P.A. 15-85 amended Subsec. (a) by adding “The court, after a hearing, may reverse or affirm, wholly or partly, or may revise, modify or remand the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.”, designating existing provision re court to set aside or modify action as Subdiv. (1), designating existing provision re court to remand order as Subdiv. (2), and making technical changes.

Cited. 180 C. 421; Id., 692; 186 C. 67; 196 C. 218; 203 C. 525; 209 C. 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355.

Cited. 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 41 CS 444; 42 CS 57.

Subsec. (a):

Trial court should decide a “taking without compensation” issue de novo since administrative agency has been held incompetent to decide constitutional issues. 209 C. 544.

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Sec. 22a-44. Penalty. Court orders. (a) If the inland ~~wetlands~~ wetlands, watercourses, and riparian protection agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of sections 22a-36 to 22a-45, inclusive, or of the regulations of the ~~inland wetlands~~ agency, the agency or its duly authorized agent may issue a written order, by certified mail, to such person conducting such activity or maintaining such facility or condition to cease immediately such activity or to correct such facility or condition. Within ten days of the issuance of such order the 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. The agency shall consider the facts presented at the hearing and within ten days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The original order shall be effective upon issuance and shall remain in effect until the agency affirms, revises or withdraws the order. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to subsection (b) of this section. The agency may file a certificate of such order in the office of the town clerk of the town in which the land is located and the town clerk shall record such certificate on the land records of such town. Such certificate shall be released upon compliance with such order. The commissioner may issue orders pursuant to

sections 22a-6 to 22a-7, inclusive, concerning an activity, facility or condition (1) which is in violation of said sections 22a-36 to 22a-45, inclusive, if the municipality in which such activity, facility or condition is located has failed to enforce its inland wetlands regulations, or (2) for which an approval is required under sections 22a-36 to 22a-45, inclusive, and for which such approval has not been obtained.

(b) Any person who commits, takes part in, or assists in any violation of any provision of sections 22a-36 to 22a-45, inclusive, including regulations adopted by the commissioner and ordinances and regulations promulgated by municipalities or districts pursuant to the grant of authority herein contained, shall be assessed a civil penalty of not more than one thousand dollars for each offense. Each violation of said sections shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Superior Court, in an action brought by the commissioner, municipality, district or any person, shall have jurisdiction to restrain a continuing violation of said sections, to issue orders directing that the violation be corrected or removed and to assess civil penalties pursuant to this section. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator together with reasonable attorney's fees which may be allowed, all of which shall be awarded to the commissioner, municipality, district or person which brought such action. All penalties collected pursuant to this section shall be used solely by the Commissioner of Energy and Environmental Protection (1) to restore the affected wetlands or watercourses to their condition prior to the violation, wherever possible, (2) to restore other degraded wetlands or watercourses, (3) to inventory or index wetlands, watercourses, and riparian areas of the state, or (4) to implement a comprehensive training program for inland wetlands wetlands, watercourses, and riparian protection agency members.

(c) Any person who wilfully or knowingly violates any provision of sections 22a-36 to 22a-45, inclusive, shall be fined not more than one thousand dollars for each day during which such violation continues or be imprisoned not more than six months or both. For a subsequent violation, such person shall be fined not more than two thousand dollars for each day during which such violation continues or be imprisoned not more than one year or both. For the purposes of this subsection, "person" shall be construed to include any responsible corporate officer.

(1972, P.A. 155, S. 9; P.A. 75-387, S. 2; P.A. 76-330; P.A. 77-599, S. 4, 7; P.A. 81-125, S. 1; P.A. 87-338, S. 9, 11; P.A. 95-151, S. 2; 95-218, S. 13, 24; P.A. 96-269, S. 2; P.A. 11-80, S. 1.)

History: P.A. 75-387 made previous provisions Subsec. (b) and inserted new Subsec. (a) re orders issued upon discovery of violation of Secs. 22a-36 to 22a-45 or regulations of inland wetlands agency; P.A. 76-330 allowed assessment of attorneys fees against violator and required that all costs, etc. be awarded to the initiator of the action; P.A. 77-599 amended Subsec. (a) to allow issuance of orders to cease an activity as well as orders to correct facilities or conditions; P.A. 81-125 amended Subsec. (a) to authorize agents of inland wetlands agencies to issue orders and amended Subsec. (b) to clarify the superior court's jurisdiction to impose fines; P.A. 87-338 amended Subsec. (a) to authorize the commissioner to issue orders concerning violations if the municipality in which the violation occurred has failed to enforce its regulations and added Subsec. (c) re wilful or knowing violations; P.A. 95-151 amended Subsec. (a) to provide for

recording of certificate of order by inland wetlands agency on land records; P.A. 95-218 amended Subsec. (b) to allow use of penalties collected under this section for restoring other degraded wetlands, an inventory of wetlands in the state and training for wetlands officials (Revisor's note: The word "to" was inserted editorially by the Revisors following Subdiv. indicators (2), (3) and (4) for grammatical accuracy); P.A. 96-269 added Subsec. (a)(2) re enforcement by the commissioner concerning unauthorized activities; pursuant to P.A. 11-80, "Commissioner of Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection" in Subsec. (b), effective July 1, 2011.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 85; Id., 532; 186 C. 67; 193 C. 414; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 221 C. 46; 225 C. 185; 226 C. 579; 227 C. 904; 228 C. 95; 229 C. 247; Id., 627; Id., 659; 242 C. 355. Trial court properly concluded that corporate officer was personally liable for cutting trees. 275 C. 105.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85. As a matter of law, department could not properly issue an administrative order under Subsec. (a) having 3 years earlier elected to bring action against plaintiff under Subsec. (b). 31 CA 105. Cited. Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

Subsec. (b):

Trial court properly determined per diem monetary penalties. 275 C. 105. Subsec. authorizes "any person" to bring an action for enforcement of provisions of Inland Wetlands, watercourses, and riparian areas Act, creating private right of action; plaintiffs had personal and legal interest in ensuring that intended development which might result in pollution to an adjacent watercourse running over portion of plaintiff's property was completed according to inland wetlands regulations and thus had standing to bring action under Subsec. 284 C. 268.

Cited. 8 CA 254; 41 CA 120. The phrase "person which brought such action" is not plain and unambiguous, and includes plaintiff who intervened as of right as a full party to the action pursuant to Practice Book rule. 135 CA 765.

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Sec. 22a-45. Property revaluation. Any owner of ~~wetlands and watercourses~~ wetlands, ~~watercourses, or riparian areas~~ who may be denied a license in connection with a regulated activity affecting such ~~wetlands and watercourses~~ wetlands, watercourses, or riparian areas, shall upon written application to the assessor, or board of assessors, of the municipality, be entitled to a revaluation of such property to reflect the fair market value thereof in light of the restriction placed upon it by the denial of such license or permit, effective with respect to the next succeeding assessment list of such municipality, provided no such revaluation shall be effective

retroactively and the municipality may require as a condition therefor the conveyance of a less than fee interest to it of such land pursuant to the provisions of sections 7-131b to 7-131k, inclusive.

(1972, P.A. 155, S. 10.)

See Sec. 12-63g re assessment of buffers.

Cited. 179 C. 250; 180 C. 421; Id., 692; 183 C. 532; 186 C. 67; 196 C. 218; 203 C. 525; 209 C. 544; Id., 652; 211 C. 416; 212 C. 710; Id., 727; 213 C. 604; 216 C. 320; 217 C. 164; 218 C. 703; 219 C. 404; 220 C. 362; Id., 476; 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355.

Cited. 4 CA 271; 5 CA 70; 6 CA 715; 12 CA 47; 15 CA 336; 18 CA 440; 19 CA 713; 20 CA 309; 26 CA 564; 27 CA 590; 28 CA 780; 29 CA 12; Id., 105; 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166. Section does not limit a property owner's remedy under Sec. 12-117a. 80 CA 630.

Cited. 35 CS 145; 36 CS 1; 41 CS 444; 42 CS 57.

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Sec. 22a-45a. General permits for minor activities. Regulations. (a) The Commissioner of Energy and Environmental Protection may issue a general permit for any minor activity regulated under sections 22a-36 to 22a-45, inclusive, except for any activity covered by an individual permit, when such activity is conducted by any department, agency or instrumentality of the state, other than a regional or local board of education, if the commissioner determines that such activity would cause minimal environmental effects when conducted separately and would cause only minimal cumulative environmental effects. Such activities may include routine minor maintenance and routine minor repair of existing structures; replacement of existing culverts; installation of water monitoring equipment, including but not limited to staff gauges, water recording and water quality testing devices; survey activities, including excavation of test pits and core sampling; maintenance of existing roadway sight lines; removal of sedimentation and unauthorized solid waste by hand or suction equipment; placement of erosion and sedimentation controls; extension of existing culverts and stormwater outfall pipes; and safety improvements with minimal environmental impacts within existing rights-of-way of existing roadways. Any state department, agency or instrumentality of the state, other than a regional or local board of education conducting an activity for which a general permit has been issued shall not be required to obtain an individual permit under any other provision of said sections 22a-36 to 22a-45, inclusive, except as provided in subsection (c) of this section. A general permit shall clearly define the activity covered thereby and may include such conditions and requirements as the commissioner deems appropriate, including but not limited to, management practices and verification and reporting requirements. The general permit may require any state department, agency or instrumentality of the state, other than a regional or local board of education, conducting any activity under the general permit to report, on a form prescribed by the

commissioner, such activity to the commissioner before it shall be covered by the general permit. The commissioner shall prepare, and shall annually amend, a list of holders of general permits under this section, which list shall be made available to the public.

(b) Notwithstanding any other procedures in said sections 22a-36 to 22a-45, inclusive, any regulations adopted thereunder, and chapter 54, the commissioner may issue, revoke, suspend or modify a general permit in accordance with the following procedures: (1) The commissioner shall publish in a newspaper having a substantial circulation in the affected area or areas notice of intent to issue a general permit; (2) the commissioner shall allow a comment period of thirty days following publication of such notice during which interested persons may submit written comments concerning the permit to the commissioner and the commissioner shall hold a public hearing if, within said comment period, he receives a petition signed by at least twenty-five persons; (3) the commissioner may not issue the general permit until after the comment period; and (4) the commissioner shall publish notice of any permit issued in a newspaper having substantial circulation in the affected area or areas. Any person may request that the commissioner issue, modify or revoke a general permit in accordance with this subsection.

(c) Subsequent to the issuance of a general permit, the commissioner may require any state department, agency or instrumentality, other than a regional or local board of education, to apply for an individual permit under the provisions of said sections 22a-36 to 22a-45, inclusive, for all or any portion of the activities covered by the general permit, if in the commissioner's judgment the purposes and policies of such sections would be best served by requiring an application for an individual permit. The commissioner may require an individual permit under this subsection only if the affected state department, agency or instrumentality has been notified in writing that an individual permit is required. The notice shall include a brief statement of the reasons for the decision and a statement that upon the date of issuance of such notice the general permit as it applies to the individual activity will terminate.

(d) Any general permit issued under this section shall require that any state agency, department or instrumentality other than a regional or local board of education, intending to conduct an activity covered by such general permit give written notice of such intention to the inland wetlands, watercourses, and riparian protection agency, zoning commission, planning commission or combined planning and zoning commission and conservation commission of any municipality which will or may be affected by such activity and to the department which shall make such notices available to the public. The general permit shall specify the information which shall be contained in the notice.

(e) The commissioner may adopt regulations in accordance with the provisions of chapter 54 to carry out the purposes of this section.

(P.A. 91-263, S. 3, 8; P.A. 92-162, S. 15, 25; P.A. 11-80, S. 1; P.A. 13-209, S. 4.)

History: P.A. 92-162 amended Subsec. (d) to provide that any person may submit comments to the commissioner concerning regulated activities permitted under this section prior to commencement of such activities and changed the deadline for such comments from 30 days prior to such commencement to 25 days; pursuant to P.A. 11-80, "Commissioner of

Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection" in Subsec. (a), effective July 1, 2011; P.A. 13-209 amended Subsec. (d) by deleting requirement that notice be given at least 60 days before initiating activity covered by general permit, making a technical change and deleting provision authorizing inland wetlands agency, planning and zoning commission, conservation commission or any person to submit written comments to commissioner concerning activity.

Cited. 226 C. 579; 228 C. 95; 229 C. 247; Id., 627; Id., 654; 242 C. 355.

Cited. 30 CA 85; 31 CA 105; Id., 599; judgment reversed, see 229 C. 627; 32 CA 799; 34 CA 385; 36 CA 270; 37 CA 166.

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Sec. 22a-45b. (Formerly Sec. 19a-93). Elimination of mosquito-breeding places by Commissioner of Energy and Environmental Protection. Survey of certain lands. Standing water on private property. Public outreach programs. (a) The Commissioner of Energy and Environmental Protection may make regulations and orders concerning the elimination of mosquitoes and mosquito-breeding places, and said commissioner or his agent may enter upon any land, tidal wetland, inland wetland or watercourse to ascertain if mosquitoes breed thereon or to survey, drain, fill or otherwise treat, or make any excavation or structure necessary to eliminate mosquito breeding on such land. When funds have been provided by appropriation by the state for the elimination of mosquitoes or mosquito-breeding places, said commissioner may conduct or cause the conducting of such work provided no filling, draining, excavation, installation or erection of any structure, or any other permanent alteration of private property shall be conducted without the consent of the landowner on whose property such work is to be conducted. The commissioner may take and hold, by purchase, condemnation or otherwise, any real property or interest in real property as he determines is necessary to abate a threat of disease to humans or animals from insect vectors. Whenever the commissioner is unable to agree with the owner of any such property as to the compensation to be paid for the taking thereof, the commissioner may bring condemnation proceedings in accordance with the procedure provided by part I of chapter 835 for condemnation by municipal corporations generally. In such case, the court may permit immediate possession of such property by the commissioner in accordance with the procedure provided by said part I of chapter 835.

(b) The Commissioner of Energy and Environmental Protection, in coordination with the Commissioner of Public Health and local health departments, shall survey land, tidal wetlands, inland wetlands or watercourses in any municipality with a population over one hundred thousand where there has been a documented death of a human from West Nile virus, to ascertain if mosquitoes breed thereon and may conduct any work, as provided for in subsection (a) of this section, necessary to eliminate mosquito breeding on such land.

(c) No private property, in any municipality with a population over one hundred thousand where there has been a documented death of a human from West Nile virus, may contain standing water that the Commissioner of Energy and Environmental Protection determines, in consultation with

the Commissioner of Public Health and local health departments, creates a risk of mosquito-borne illness. The Commissioner of Energy and Environmental Protection shall enforce the provisions of this subsection.

(d) The Commissioner of Energy and Environmental Protection, in coordination with the Commissioner of Public Health and local health departments, shall encourage public outreach programs instructing residents and private property owners of the risks of standing water and the signs and symptoms of West Nile virus.

(1949 Rev., S. 3859; 1971, P.A. 870, S. 51; P.A. 76-436, S. 277, 681; P.A. 77-614, S. 323, 610; P.A. 78-280, S. 1, 127; P.A. 93-381, S. 9, 39; P.A. 95-257, S. 12, 21, 58; P.A. 97-289, S. 1, 9; P.A. 11-80, S. 1; P.A. 13-197, S. 8.)

History: 1971 act replaced superior court with court of common pleas, effective September 1, 1971, except that courts with cases pending retain jurisdiction unless pending matters deemed transferable; P.A. 76-436 replaced court of common pleas with superior court and added reference to judicial districts, effective July 1, 1978; P.A. 77-614 replaced commissioner of health with commissioner of health services, effective January 1, 1979; P.A. 78-280 removed references to counties; Sec. 19-50 transferred to Sec. 19a-93 in 1983; P.A. 93-381 replaced commissioner of health services with commissioner of public health and addiction services, effective July 1, 1993; P.A. 95-257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health, effective July 1, 1995; P.A. 97-289 transferred responsibility for mosquito control under this section from the Commissioner of Public Health to the Commissioner of Environmental Protection, deleted former provisions re notice of mosquito control activities and assessment of damages and provided requirement for consent of landowner, and authorization to acquire property for mosquito control, effective July 1, 1997; Sec. 19a-93 transferred to Sec. 22a-45b in 1999; pursuant to P.A. 11-80, "Commissioner of Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection", effective July 1, 2011; P.A. 13-197 designated existing provisions as Subsec. (a), added Subsec. (b) re commissioner's survey of lands in any municipality with a population over 100,000 where there has been a documented human death from West Nile virus and re authority of commissioner to conduct work to eliminate mosquito breeding on such land, added Subsec. (c) re prohibition on standing water on private property in any municipality with a population over 100,000 where there has been a documented human death from West Nile virus and added Subsec. (d) re commissioner's encouragement of public outreach programs on the risks of standing water and the signs and symptoms of West Nile virus, effective June 21, 2013.

See Sec. 19a-213 re duties of local health authorities re mosquito-breeding places.

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Sec. 22a-45c. (Formerly Sec. 19a-94). Maintenance of drained land by Commissioner of Energy and Environmental Protection. When any work has been conducted in accordance with section 22a-45b that is subject to the approval of the Commissioner of Energy and Environmental

Protection, said commissioner shall keep the same in repair and free from obstruction or otherwise treat such areas so as to make such work effective. Said commissioner may appoint one or more agents to supervise the work done under the provisions of this section and section 22a-45b, who may exercise the authority granted to said commissioner. The expenses of said commissioner and said agents in carrying out the provisions of this section and section 22a-45b shall be paid from funds provided by appropriations by the state for such purpose. The Comptroller may advance to said commissioner such amounts, within the appropriations therefor, as are necessary to meet the current expenses for work authorized under the provisions of this section and section 22a-45b. Any person obstructing the work of examining, surveying or ditching or otherwise treating such mosquito-breeding areas, or obstructing any ditch, canal or drain, or the natural outlet of any marsh-forming and mosquito-breeding areas, shall be guilty of a class C misdemeanor.

(1949 Rev., S. 3860; P.A. 77-614, S. 323, 610; P.A. 93-381, S. 9, 39; P.A. 95-257, S. 12, 21, 58; P.A. 97-289, S. 2, 9; P.A. 11-80, S. 1; P.A. 12-80, S. 174.)

History: P.A. 77-614 replaced commissioner of health with commissioner of health services, effective January 1, 1979; Sec. 19-51 transferred to Sec. 19a-94 in 1983; P.A. 93-381 replaced commissioner of health services with commissioner of public health and addiction services, effective July 1, 1993; P.A. 95-257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health, effective July 1, 1995; P.A. 97-289 transferred responsibility for mosquito control under this section from the Commissioner of Public Health to the Commissioner of Environmental Protection, deleted provisions re construction or repair of tide gates and funds provided by voluntary contributions, and made technical changes, effective July 1, 1997; Sec. 19a-94 transferred to Sec. 22a-45c in 1999; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection”, effective July 1, 2011; P.A. 12-80 changed penalty from a fine of not more than \$100 or imprisonment of not more than 90 days or both to a class C misdemeanor.

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Sec. 22a-45d. (Formerly Sec. 19a-94a). Plan for use or application of larvicide to control mosquitoes. (a) The Commissioner of Energy and Environmental Protection, in consultation with the Commissioners of Public Health and Agriculture and the director of the Connecticut Agricultural Experiment Station, shall establish a plan, within available appropriations, for the use or application of larvicide to control mosquitoes.

(b) Not later than September 1, 2013, the plan described in subsection (a) of this section shall be updated to establish: (1) A prohibition on the use or application of methoprene or resmethrin in any storm drain or conveyance for water within the coastal boundary, as described in subsection (b) of section 22a-94 provided such prohibition shall not apply to any municipality where there was a documented death of a human being from West Nile virus if such municipality has a population greater than one hundred thousand residents; (2) a record-keeping, reporting and Internet posting requirement for the use or application of methoprene or resmethrin for mosquito

control within the coastal area, as described in subsection (a) of section 22a-94, by any municipality or the state; and (3) recommendations for a pilot program to evaluate the retail sale and use of methoprene and resmethrin for mosquito control within the coastal area, as described in subsection (a) of section 22a-94, that is labeled for mosquito control in streams, storm drains, storm gutters, and bird baths to ensure that such methoprene and resmethrin use is consistent with the labeling requirements of such methoprene or resmethrin product.

(c) Notwithstanding the provisions of subsection (b) of this section, methoprene or resmethrin may be introduced into a storm drain, wetland or other body of water where mosquito larvae are found or suspected if such introduction is recommended by the Commissioner of Energy and Environmental Protection, in consultation with the Commissioner of Public Health and the mosquito management coordinator of the Department of Energy and Environmental Protection, to prevent an increasing threat of mosquito-borne disease, based on an evaluation of mosquito and mosquito larvae surveillance by the Connecticut Agricultural Experiment Station in accordance with the state's Mosquito Management Program.

(P.A. 94-191; P.A. 95-257, S. 12, 21, 58; P.A. 11-80, S. 1; P.A. 13-197, S. 7.)

History: P.A. 95-257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health, effective July 1, 1995; Sec. 19a-94a transferred to Sec. 22a-45d in 1999; pursuant to P.A. 11-80, "Commissioner of Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection", effective July 1, 2011; P.A. 13-197 designated existing provisions as Subsec. (a) and amended same to add reference to director of the Connecticut Agricultural Experiment Station, delete "contingency" re plan, replace "spraying of larvicide" with "use or application of larvicide" and delete requirement that use of larvicide be in the event of an outbreak of infectious disease in any human or animal population due to mosquito infestation, added Subsec. (b) re the updating of plan to include a prohibition on use or application of methoprene or resmethrin in any storm drain or conveyance for water within the coastal boundary, record-keeping and reporting requirement for use of methoprene or resmethrin in the coastal boundary and recommendations for a pilot program to evaluate the retail sale and use of methoprene and resmethrin in the coastal area, and added Subsec. (c) re exception to prohibition on use of methoprene or resmethrin in a storm drain, wetland or other body of water where mosquito larvae are found if recommended by commissioner, effective June 21, 2013.

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