

WETLANDS DEMYSTIFIED
Updated Wetlands Regulations
By Paul Hennen

This article is meant to alert you that your Wetlands Commission has updated its regulations effective October 14, 2005. All applications pending before that time fall under our old regulations. While most procedures remain the same there were some important changes made, especially in definitions, bonding, and fees. For example, we changed the definition of a regulated area that requires a wetlands permit to not only include any project area within 150 feet of a wetlands or watercourse, but also all major brooks and their tributaries up to 300 feet and the Quinebaug River up to 500 feet. We now refer to these areas as upland review areas and make clear in the definition that the Commission may rule that an activity in an area outside of an upland review area may be a regulated activity and thus requiring a permit if it finds that the project may or is likely to impact a wetlands or watercourse (at any location).

In the past some applicants have argued that their activity is “agricultural” and therefore their project should be allowed as a “matter of right.” This argument may be valid in some cases, but to meet the requirements of State statutes we added “the sale of agricultural commodities” to the definition. In other words for those that lease land for farming activities, haying for example, you are a landlord not a farmer. The definition of farming adheres to the same definition as an agricultural activity. There are a number of other definitions that have either been modified or added to in order to make the definition clearer. Among these are the definitions of crops, grazing, minimal, habitats and most importantly, security.

What do we mean by security? Our definition of security has the same meaning as surety. In other words it means bonding to guarantee that a project is completed properly and according to the application and site plan approved. The problem was that surety was never really defined. It was the Commission’s practice to deduct the cost of engineering, Agent review and site monitoring from the surety bond at the end of the project. This practice led to numerous disputes with permit holders. We have therefore deleted the term surety from our regulations and added the definition of security to mean a financial guarantee (cash bond) for not only the satisfactory completion of the project but also for proper erosion and sedimentation control, wetlands remediation should that be necessary, engineering and/or inspection fees (site monitoring to insure permit compliance) and public noticing costs associated with a cease and desist order and/or notice of violation. Section 13 of our regulations provide detailed information concerning the subject of security.

We modified Section 19, which deals with application fees and deposits to make clear to all permit applicants that they must shoulder the costs of their application rather than the Town of Pomfret. Some of these costs may include consultant's fees and staff time required to review and evaluate applications and site plans. The Commission has the authority to hire experts (consultants) to evaluate the proposed project, review applicant's expert testimony and to make recommendations to the Commission as appropriate. In the past it was not always clear at whose expense this would be done. We have now made it very clear that this is part of the application process and that the applicant is responsible for the costs involved. This does not happen often but one should be prepared, especially if your project is a "significant impact activity [see "Wetlands Demystified Vol.2, No.6, *The Pomfret Times*, Vol.11, No.4, July 2005 or visit our web site at www.pomfretct.org].

Lastly, we added two appendices to the Regulations. Appendix A addresses Pomfret fees and deposits associated with a wetlands application in some detail. Appendix B provides model language for a conservation easement agreement should the Commission require such an easement as a condition of wetlands permit approval. We have also included with our Regulations a map showing the major Town watercourses in which the 300 and 500-foot rule apply and a map of the Town's wetlands along with an overlay depicting all current Town land parcels and roads. I am informed that all of this information is now available on our web site. For those who would like to obtain a copy of our new Regulations for some really stimulating reading you may do so at the Town Hall.

The subject of our next article has not been decided yet, but hopefully we can continue to keep you informed about one of our Town's most important resources, its wetlands and watercourses.