

WETLANDS DEMYSTIFIED
Enforcement, Part I
By Paul Hennen

Applicants for a wetlands permit know that we as the Wetlands Agency for the Town of Pomfret will take necessary action to protect our wetlands and watercourses and the natural ecologies they support including enforcement actions when necessary. The readers of *Wetlands Demystified* who may never have applied for a permit or who have never been caught up in a wetlands violation issue may not appreciate how vital enforcement is and why the Agency considers enforcement important. Also, our readers may not be aware of the potential costs to them that may result should an enforcement action be required. The purpose of this series of articles is to explain the enforcement process.

The Connecticut Wetlands Act of 2001 requires municipal wetlands agencies to take prompt corrective action when it is found that wetlands or watercourses are being adversely impacted. That does not necessarily include only activities in wetlands or watercourses. Activities anywhere that have the potential to harm a wetland or water resource are a violation of the Act. An example of such an activity might be piling debris in an upland area that could allow polluting materials to leach into groundwater that discharges to the wetland. All groundwater polluted or not, ultimately finds its way to a wetland or watercourse whether on your property or someone else's. Our vital aquifers may be next, and then finally your most vital source of water, your well.

In 1998, the Inland Water Resources Division of The Connecticut Department of Environmental Protection (DEP) developed model wetlands regulations in order to implement the Wetlands Act. The Agency adopted the DEP model as our regulations in 2001. There have been changes to our regulations since that time, but the provisions that give the Agency its enforcement authority under the law have remained essentially unchanged. I will discuss some of the more important aspects of the enforcement process and the possible consequences violators may face as a result of harming an important water resource. But first, how does enforcement begin?

Typically, concerned citizens report activities they believe to be injurious to a wetland or watercourse. As I stated earlier we all depend on our wells for our daily water supply. One aquifer destroyed as a result of pollution could result in the loss of hundreds of drinking wells. As a matter of policy we will not disclose the name of anyone who provides information to us. An Agency member or one of our Agents will investigate the complaint and advise the Agency of the circumstances. It now becomes an Agency issue if it is agreed that the violation has occurred. Our members and staff are also alert to recognize potential violations and report them for investigation or discussion at our next scheduled meeting if time allows. This is an important point. If the violator is not stopped, the damage will have been done, and the Agency must then determine what can

be done to restore the wetland if at all possible. In some cases, restoration is not possible or may further damage the wetland. I can assure you there are those in our community that know this quite well. When you see a backhoe operating on a weekend it always deserves a second look.

Assume a complaint has been reported to a member of the Agency or staff. Our wetlands Agent has visited the site, found no one present but has found clear evidence of excavation close to the edge of a wetland as delineated on a soils map. The Agency meets only once a month. It is clear to the Agent that more damage is likely before the violation can be reported to its members. The Agent has also determined that no wetlands permit has been issued for the project underway. In our by-laws we grant to our Agents certain authority. Under such circumstances, we delegate the authority to the Agent to issue a formal Cease and Desist Order by certified mail or other means as part of a Notice of Violation if the Agent deems a Cease and Desist Order and a Notice of Violation to be appropriate. Since our Agents are part time, we have found it necessary on occasion to have the order delivered by sheriff to get the violators attention and stop further damage. Assume at this point that we have made contact with the violator, the order has been served and the excavation activity has stopped what now?

Once a Cease and Desist Order has been issued, State statute requires us, as an Agency, to hold a hearing with at least four members present (i.e., a quorum) within ten (10) calendar days of the issuance of the order to provide the alleged violator an opportunity to be heard and show cause why the Cease and Desist Order should not remain in effect. The Agency then has ten (10) days to reply by certified mail of its decision that the original order is to remain in effect, or that a revised order is in effect, or the order has been withdrawn. This decision must also be published in a local newspaper. If the Agency decides to keep the order in effect without modification because we have determined the violation too significant to ignore, we will direct the violator to submit an application for a remediation plan to restore the damage done and any further activities he/she wishes to continue that could adversely impact a wetland. In addition, the Cease and Desist Order will remain in affect until that process is completed.

There are other avenues we may use to resolve wetlands enforcement issues. In the next *Wetland Demystified* in this series, you will learn that we are authorized by law to take other measures to resolve a violation issue as opposed to the issuance of a Cease and Desist Order. You will also learn that we can place a legal notice (caveat) on property recorded in Town land records of the violation is not resolved promptly. That notice will remain in effect until released by the Agency. Such notice is not the same as a property lien, but it comes close. And, you will also learn that through the courts, we can resort to quite draconian measures if circumstances warrant, and that means not only the violator, but also others associated with the project could be held accountable. Then there is always the DEP. The State has powers outside of the courts that we do not have. It is not the Board of Selectmen or the voters of our Town to whom we must be responsible. **It is the courts and the Connecticut DEP that holds us accountable for what we as an Agency do or do not do.** If someone is a consistent wetlands violator or has

significantly impaired a wetland, I can assure you that the State enforcers will respond. I hope you will stay tuned.

My thanks to Katarina Rutkowski for her review of this article and comments.