

WETLANDS DEMYSTIFIED
Timber Harvests and the Protection of Wetlands & Watercourses, Part I
By Paul Hennen

In this series of articles I will discuss the relationship between forestry as a commercial enterprise and the Inland Wetlands Agency in Pomfret. I will cover topics as to who must apply for a wetlands permit, what responsibilities you as a land owner have and most importantly those management practices foresters must follow to avoid damage to our Town's valuable water resources. Forestry as a commercial business is a complex subject and one that is vigorously regulated in our state by the Department of Environmental protection (DEP) and municipal wetlands agencies. Since some 17 percent of Connecticut's soils are classified as wetlands, it is becoming increasingly rare that our Agency does not get involved in the permitting process in some way. In this article I will touch on the legal and jurisdictional issues involved in that process.

Historically, Connecticut has a long record of removing trees from the landscape. Some of this resulted from the need to clear land for farming and development. Timber was also needed to fuel not only the lumber and charcoal industries, but also to provide railroad ties for our nation's expanding transportation system. In short, timber was found to be valuable as a commercial commodity. In their zeal to exploit this resource foresters had little consideration for the environment. Increased flooding, water pollution and the loss of wildlife and fisheries habitat resulted. In more recent times the loss of recreational areas added to the problem. In response to this, laws were enacted to regulate forestry activities to prevent continued abuse. In 1972 the legislature passed the Connecticut Inland Wetlands and Watercourses Act. The Act also was meant to provide some regulation to the timber industry as it related to the state's wetlands and watercourses. The Forest Practices Act, passed in 1991, regulates forest activities that affect wetlands and watercourses. This law also regulates forest timber harvesting as a commercial practice. The federal government also passed laws designed to safeguard wetlands and watercourses. Section 404 of the Clean Water Act is an example. In this article I will focus on the Connecticut Inland Wetlands and Watercourses Act which hereafter I will refer to as the Act. The Act designates wetlands agencies as the sole permitting authority over timber harvesting. But there are restrictions as to how that authority may be applied and wetlands and watercourses still be protected.

Under section 1-1(q) of the Conn. Gen. Statutes forestry is defined as an agricultural activity. However, forestry as a practice is not defined. This notwithstanding, The DEP takes the position that the definition of harvesting of forests falls within the definition of farming and agriculture. How then is forest land defined? The DEP defines forest land as at least one contiguous acre upon which there is no structures, maintained landscape,

access way or other improvement and which is occupied in random distribution by trees. The remainder of the definition is rather technical, so I will not burden our readers with those details here. At the end of this series I will list references under further reading for those that wish to have more information. Under the Act, farming and thus forestry operations that impact wetlands and watercourses is permitted “as of right”. If by law forestry is a right, regardless of the wetlands issue, how can we as an Agency get involved? Because the Act also says that wetlands agencies are legally entitled to “review any proposed activity which may affect a wetlands or watercourse”. By this statement forestry falls within our jurisdiction to regulate. What if the forester says there are no wetlands involved? The law makes clear that only the Wetlands Agency can make that determination. There are restrictions on some agricultural practices (forestry) as a matter of right such as clear cutting except to extend a crop, erection of buildings and roadways not directly related to the farming or forestry operation, the relocation of watercourses with continual flow and filling or reclamation of wetlands or watercourses with continual flow. So how does all of this come together? If it is a “matter of right” under the law what can we do as a wetlands Agency to protect wetlands and watercourses from the abuse of aggressive commercial foresters? Do land owners need a permit to harvest trees on their property? I hope you will stay tuned to find the answers.