

Home Builders & Remodelers Association of Connecticut
**Public Act 12-151 (Senate Bill 345) – *An Act Concerning the Time in Which
A Regulated Activity Must be Conducted under a Permit Issued by an
Inland Wetlands Commission***

(June 15, 2012)

Summary: Effective Oct. 1, 2012, PA 12-151 simply coordinates inland wetland permit expiration dates with the expiration dates for associated site plans and subdivisions. It, therefore, removes the development uncertainty of possibly losing an approved wetland permit while waiting to obtain P&Z and state agency permits. It also changes language to clarify the practice of allowing reasonable time-of-year restrictions on work in or near wetlands.

More Detail: Under CT statutes, wetland permits and most site plan and subdivision permits expire in five years. Developers must also apply for inland wetland permits first before applying to P&Z for site plan or subdivision approvals. Therefore, wetland permits are obtained often well before P&Z approvals. Thus, the expiration dates for various local approvals for the same project don't match up. After getting local approvals, state agency permits must then be obtained. This creates a difficult timeline scenario for developers, requiring them to get P&Z approvals and state agency permits prior to the wetland permit expiring. The current process can create the need for a return trip to wetlands for the identical project already approved, creating unnecessary expense and uncertainty for both developers and municipalities.

PA 12-151 matches the expiration date for inland wetland permits to the same expiration date for any associated site plan (chapter 124), subdivision (chapter 126), HOME CT or Incentive Housing proposal (chapter 124b), or affordable housing appeals act proposal (chapter 126a), or for 10 years, whichever is earlier. The change of references from specific sections (e.g., 8-3, 8-25, 8-26) to chapters is meant to include the universe of approvals under such chapters (e.g., special permits, special exceptions).

The new law also clarifies that local wetland agencies can place conditions on approved work, such as time of year restrictions to avoid, for example, the breeding season of certain species. To guard against abuses of this authority, the wetland agency, or its agent, must make a determination that such restrictions are necessary to carry out the policy of the act. This new language replaces the authority that allowed local commissions to "establish a specific time period within which any regulated activity shall be conducted ...," which was abused by some commissions that, despite granting a permit that had a five year life under statute, required all approved regulated activity to be completed within one or two years (which could be prior to obtaining all other necessary local, state and federal permits).

A copy of PA 12-151, which the Governor signed on June 15, 2012, is attached (underlined language is new language added to the law; [bracketed language] is language deleted from the law):

Public Act No. 12-151

Senate Bill No. 345

AN ACT CONCERNING THE TIME IN WHICH A REGULATED ACTIVITY MUST BE CONDUCTED UNDER A PERMIT ISSUED BY AN INLAND WETLANDS COMMISSION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (d) of section 22a-42a of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(d) (1) In granting, denying or limiting any permit for a regulated activity the inland wetlands 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 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 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 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 [section 8-3, 8-25 or 8-26] chapter 124, 124b, 126 or 126a shall be valid [for five years provided the agency may establish a specific time period within which any regulated activity shall be conducted] until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued under this section for any [other] 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.