

Guidelines for Review of Local Laws Affecting Farm Operations' Use of Wetlands

- Farm operations often use wetlands for agricultural purposes. The Department of Environmental Conservation (DEC) recognizes agricultural use of wetlands in its law and regulations. The Department considers the DEC standards and permitting requirements in evaluating whether restrictions on agricultural land use are reasonable. In many instances, the Department has found local laws that exceed State standards unreasonably restrictive. Each law, however, is examined on its own merits. For example, if the local government believes that local conditions warrant standards which differ from DEC's, the Department will consider those conditions in evaluating whether the local standards are unreasonably restrictive.
- DEC's regulation of wetlands is set forth in §24-0701 of the Environmental Conservation Law (ECL) and 6 NYCRR Part 663. Section 24-0701(4) of the ECL excludes the following from regulated activities:

“ The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetlands or other land for growing agricultural products... .”
- Section 663.2(c) of the DEC regulations defines “agricultural activity” to also include the clear-cutting of vegetation, other than trees, for growing agricultural products; constructing winter truck roads for removing selectively cut trees; operating motor vehicles for agricultural purposes; erecting structures required to enhance or maintain the agricultural productivity of the land; and using chemicals and fertilizers according to normally accepted agricultural practices, including application of stabilized sludge when applied at agronomic loading rates.
- DEC regulates wetlands of 12.4 acres or larger. Local governments can assume regulatory authority over State wetlands pursuant to Part 665 of the regulations. Section 665.4(a)(3) provides, however, that the local law must not regulate activities exempted from regulation by §24-0701 of the Law as set forth in §665.2(x)(1)-(3). Local governments can also adopt their own local freshwater wetlands protection laws. Section 24-0501(2) of the ECL states that such a local law shall not affect the activities exempted from permit by §24-0701, however.
- Jurisdiction over wetlands smaller than 12.4 acres is reserved to local governments by ECL §24-0507. The Court of Appeals, in *Matter of Drexler v. Town of New Castle*, 62 N.Y.2d 413, 418-420 (1984), held that these nonqualifying wetlands fall outside the mandates of ECL Article 24 and are subject only to local regulations. However, for purposes of AML §305-a, the Department takes into account wetlands standards established by the ECL and DEC regulations in evaluating whether local wetlands laws are unreasonably restrictive.