

Aquaculture Now Legal As Agriculture In Pennsylvania

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facilities that their impoundments along low-lying areas, generally on flood plains, could be considered wetlands and be affected by laws intended to protect real wetlands that serve to filter water, moderate its pH, and retain it through dry periods.

The law states, "Aquaculture facilities licensed ... are not wetlands ... so long as such facilities were created and have been continuously operating for any purpose, including effluent mitigation, prior to Sept. 23, 1985."

It goes on to clarify that facilities constructed after that date also receive legal protection from being considered a wetland, as long as they were not created upon, or currently exist upon, wetlands.

It also allows normal maintenance and improvements on facilities, "... notwithstanding any statutory provision relating to wetlands."

The pre-September 1985 facilities are also exempt from having to have state permits for maintenance or improvements.

Those familiar with current federal proposals aimed at controlling nutrient management of livestock operations (especially large operations), should recognize the permits developed and proposed in the state under the National Pollution Discharge Elimination System (NPDES).

Under the Clinton Administration's Clean Water Act initiative, the federal Environmental Protection Agency has been attempting to get states to develop NPDES permits for certain livestock operations.

The permits are controversial because they imply regular and unusual federal oversight and concern of local farming businesses, and because the granting of such permits are open to public hear-

ings, which some consider could open up farms to attack from nuisance neighbors or residential or recreational developers.

While the Pennsylvania agricultural industry has mostly sided with efforts to make farming concerns more the jurisdiction of state government rather than local, that is done because a number of farms and farming operations don't easily fall within local boundaries, but almost all fall within state borders. (There are of course exceptions.)

State oversight, and its overriding protection (mostly from local land-use battles), had been seen as preferable because local governments had been creating local ordinances restricting normal and progressive agricultural operations.

Most state-issued NPDES permits (issued by the states under authority and direction provided by the federal government) deal with industrial and municipal operations involving direct dumping of waste water into streams and earth moving activities involving more than five acres.

More recently versions of the permits have been developed to address non-point sources of potential water pollution — agricultural operations.

For the most part, only since the 1970s through the 80s did aquacultural operations begin to receive second glances for potential nutrient pollution of streams.

Fish manure and uneaten food that passes through some of the state's many trout facilities (many of the largest owned by the state Fish and Boat Commission) had started to become somewhat of an issue as fisherman and stream biologists pointed to the effluent backwater areas of some state and private fisheries.

Those backwaters generally appeared heavy with bacteria and

different algae, and did seem to have at least some impact on the streams.

Under the new aquaculture law, a general permit is to be developed by the state Department of Environmental Protection (DEP) for aquacultural facilities, and aquacultural facilities that discharge waters into streams would be required to obtain a permit and comply with its provisions for testing and reporting.

(The permit application fee is not to exceed \$100 per facility over a 5-year period.)

Further, all state agencies are to work with DEP to develop a consolidated permitting process for aquaculture.

The law also directs the State Treasury to establish an Aquaculture Development Account, the funds of which are to be used to "... stimulate the growth of the aquacultural industry in ..."

Pennsylvania. (Funds for the account are to come from all fees and charges the law generates, except for monies generated from the NPDES permit fees.)

The uses of the account funds are described in the law as being for the the administration of PDA aquaculture programs, including the PASS survey; up to 10 percent deposited every year may be used for research; and the remainder after administrative costs, to be used to provide low-interest loans to aquacultural producers for development, expansion and modernization of facilities.

The Pennsylvania Fish and Boat Commission is the independent state agency given responsibility for the protection of the state's fishes, reptiles and amphibians.

While it has a visible force that appears to place heavy emphasis on propagation of sport fish and enforcement and education of sport fishing and boating laws, the

PFBC has had responsibility and authority to control the introduction of fish and other aquatic species into the waters of the state.

It also is involved with water quality issues, and actually has had a fairly long memorandum of understanding with the DEP (when formerly DER) for the enforcement of water pollution and environmental laws.

For example, it used to be that the PFBC could help with stream improvement work, but the landowner would be required to get permission from DER for the work. The PFBC can now design and approve such work without having to directly involve DEP staff.

As protector of the state's wild and natural fisheries, the PFBC has had authority to determine what species of fish could be released, raised or propagated in waters flowing into the state's free flowing waterways.

(Closed-loop, or self-contained aquacultural systems are covered under different rules. For example, such systems avoid the PFBC bans on raising certain fish species, such as tilapia, that have been banned from production in open-ended aquacultural systems since the mid-1980s, one of the late Ralph Abel's last acts as PFBC executive director.)

While the PFBC executive director himself has the final authority to ban the instate propagation and release of fish species, the Aquaculture Development Law seems to provide a modification of the exercise of that authority.

It directs that, "The commission shall determine which species of fish are allowed to be propagated in each watershed. (The law defines the state as comprised of five major watersheds, each to be treated separately. The PFBC may further subdivide those water-

sheds, if deemed necessary for the protection of indigenous or approved species, and make species propagation approval determinations based upon the increased distinction of watersheds.)

"On or before Jan. 31 of each year, the (PFBC) shall supply the (PDA) a current list of species approved for propagation and the conditions under which each species may be cultured.

"As the commission approves a new species for propagation throughout the year, it shall notify the department of the species and watersheds.

"Except triploid and other non-reproducing forms, species may be propagated in the same watersheds within which they are allowed to be stocked."

As an initial listing of approved species, the law sets it to be the PFBC's listing of approved species (as of Jan. 1, 1995) for propagation or stocking within those watersheds.

The law sets up separate registrations and fees for the propagation of fish species, and for the sale or dealing of approved species.

The fee for registration to propagate species is \$150 for five years. The fee for dealing those species is \$50 for five years.

(A change from annual registration.)

Those who are registered to propagate species are automatically registered to sell them.

There are some health concerns included in the law.

"Transportation of species of fish into his commonwealth is limited to sources of species whose health inspection reports have already been approved by the department (PDA)."

(Continued next week.)

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