

# New York State Department of Environmental Conservation (DEC)

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## Overview of the NYSDEC Wetland Program

Kevin R. Bliss





# Wetland Functions & Values

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If we don't understand wetland functions and values, we may negatively impact our environment, perhaps irreversibly.

Familiarity with wetland functions and values can improve decision making and protect values that may be held today, and by future generations.




## From ECL Article 24

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(a) **flood and storm control** by the hydrologic absorption and storage capacity of freshwater wetlands;

(b) **wildlife habitat** by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the bald eagle and osprey;



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(c) **protection of subsurface water resources** and provision for valuable watersheds and recharging ground water supplies;


(d) **recreation** by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;



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(e) **pollution treatment** by serving as biological and chemical oxidation basins;

(f) **erosion control** by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors;



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(g) **education and scientific research** by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources;

(h) **open space and aesthetic appreciation** by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions; and



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**(i) sources of nutrients in freshwater food cycles and nursery grounds and sanctuaries for freshwater fish**



## What's Regulated....

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Mapped wetlands greater or equal to 12.4 acres  
& smaller wetlands of Unusual Local Importance

100' adjacent upland areas

Fill, Excavation, Drainage, Vegetation removal, Grading

Structure construction and replacement

Application of pesticide and Discharge of pollutants





## What's Exempt.

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Most agricultural activities, including selective cutting of trees,  
but not filling

Most routine maintenance and repairs

Continuing lawful uses, i.e. that which was going on before the  
wetlands act or after permit is issued and expires

# Nine Regions w/ Multiple Offices

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## Content of a Complete Permit Application

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- *§621.4 Requirements for specific permit applications.*

“The requirements in this section for specific permits include additional information to be furnished for the department to determine that the application is complete. **Supplemental information** that the department determines is necessary to review the application **may be requested at any time.**”



## **Application Requirements - Complete Application**

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- **Application Form:** The application form including a detailed description of the proposed project (provide 3 copies and retain a 4th for your records).
- Application is available on line at:

**[http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/jointapp.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/jointapp.pdf)**



## Application Requirements - Complete Application

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- **Location Map:** Three copies of a location map showing the precise location of the project by reference to known landmarks such as streets and public buildings. (A photocopy of a USGS topographic map or equivalent will usually be sufficient, or
  - Google Maps; Bing Map; Mapquest
  - DEC Environmental Resource Mapper

# http://www.dec.ny.gov/imsmaps/ERM/viewer.htm

ENVIRONMENTAL CONSERVATION

Environmental Resource Mapper

Search	Layers & Legend	Tell Me More...
Need a Permit?	Contacts	Help



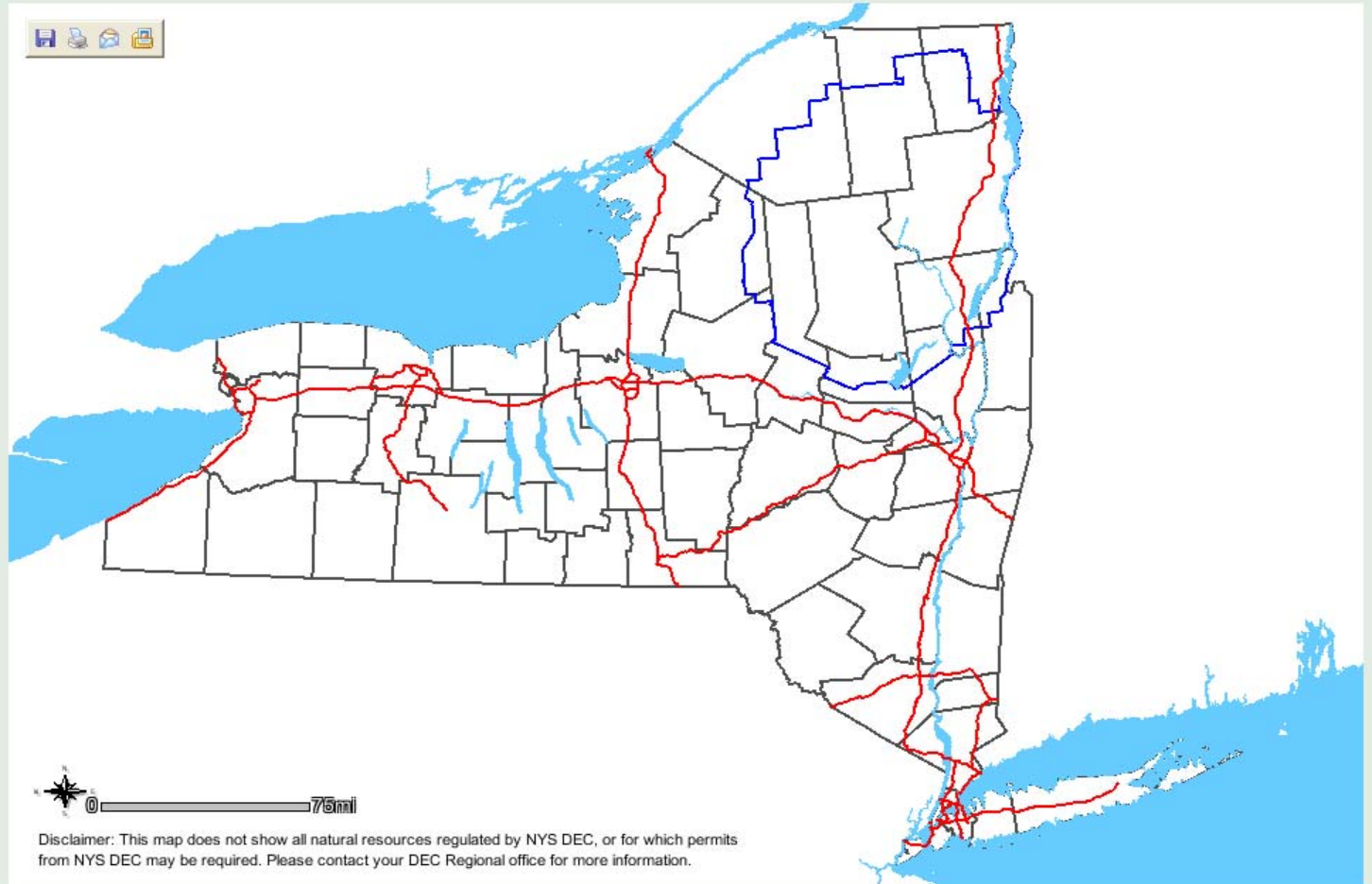
## Search

Please select the type of search to be performed:

- Address
- Zip Code
- County
- Town / City / Village

Please enter a Town / City / Village:

Note: The search is NOT case sensitive





## Application Requirements - Complete Application

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- **Project Plans:** Three copies at a scale of 1"=50' or larger, including topography or cross section – something to give feel for slopes and amount of grading intended.
- Show existing conditions and the work to be performed.
- Show the wetlands boundary (ideally) verified by DEC staff.



## **Application Requirements - Complete Application**

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Show the extent of all fills or excavations and the dimensions of all proposed buildings; structures or other appurtenances.

**Photographs:** Recent clear photographs of the project site and wetlands labeled with the view shown and the date of the photographs.





## Application Requirements - Complete Application

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- **Satisfaction of SEQR and SHPA requirements:**

Information necessary for the requirements of the State Environmental Quality Review Act (SEQR) and the State Historic Preservation Act (SHPA) which will include:

  - A completed Environmental Assessment Form (Part 1), and in certain cases, an accepted Draft Environmental Impact Statement (DEIS)
  - A completed Structural Archaeological Assessment Form (if required), and in certain cases, a cultural resource survey.



## **Application Requirements - Complete Application**

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**Landowner's Permission:** “Permission to Inspect” Form.

If the applicant is not the owner of the land for which the application is submitted, written permission of the landowner for the applicant to file the application and undertake the proposed activity. (But even then, in most cases, applicant will be switched to landowner.)



## Application Fees

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- Minor projects \$50 (Most projects involving fill are major)
- Modifications to Permits \$50
- Residential projects defined as associated with one single family dwelling and customary appurtenances thereto \$50
- Multiple family dwellings and customary appurtenances thereto \$100
- Other projects \$200



# Minor Projects (Examples)

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- Restoring, reconstructing, or modifying existing functional structures or facilities, excluding drainage ditches, that involves a temporary disturbance of less than 50 square meters (approximately 540 square feet) of ground surface.
- Filling for dikes or berms, excavations or other activities associated with a wetland or riparian restoration project authorized, designed or undertaken by the USDA Natural Resources Conservation Service, USDI Fish and Wildlife Service, US Army Corps of Engineers or the department.
- Constructing, in an adjacent area, farm ponds that do not require a permit pursuant to Part 608 of this title.
- Placing a non-commercial structure, no larger than 576 square feet (53.51 square meters) gross floor area and no closer than 25 feet (7.62 meters) from the wetland boundary, proximate to an existing single family residence in the adjacent area of a wetland.



# Adjacent Area General Permit

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Applies to first 50 feet of adjacent area

No fee

Good for limited work in area that is already disturbed, i.e. lawns...



# GP Authorized Activities

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- Demolition and removal of existing accessory & appurtenant structures
- Driveway/parking construction up to 1,000s.f.
- Additions to existing structures up to 1,000s.f
- Garages/decks/sheds, accessory/appurtenant Structures < 1,000s.f.
- In kind, in place replacements of structures, roads, utilities

# The Application Review Process

- Uniform Procedures Act; 6 NYCRR Part 621
- Applicant's Guide to UPA—available on line

#### Step 4: Final Decision

##### When Can DEC Make a Final Decision?

###### Minor Projects:

DEC must make a permit decision on minor projects within 45 days of determining the application complete.

###### Major Projects:

- If no hearing is held, DEC makes its final decision on the application within 90 days of its determination that the application is complete.
- If a hearing is held, DEC notifies you and the public of a hearing within 60 days of completeness determination, and the hearing must begin within 90 days of the completeness determination.

Once the hearing ends, DEC must issue a final decision on the application within 60 days after receiving the final hearing record.

##### Who Makes the Final Decisions on Applications?

The Regional Permit Administrator normally issues permits for projects not requiring a public hearing.

Generally, the Commissioner makes the decision if DEC holds a public hearing.

##### What Happens if DEC Does Not Act Within the Uniform Procedures Act Time Periods?

Time periods may be extended by mutual written consent of the applicant and DEC. If DEC fails to make a final decision within the required time period, you can notify the Chief Administrator at DEC, Division of Environmental Permits, 625 Broadway, Albany, NY 12233-1750, by certified mail, of that failure. DEC must then mail its decision to you within five working days or else the permit is deemed granted, subject to standard conditions.

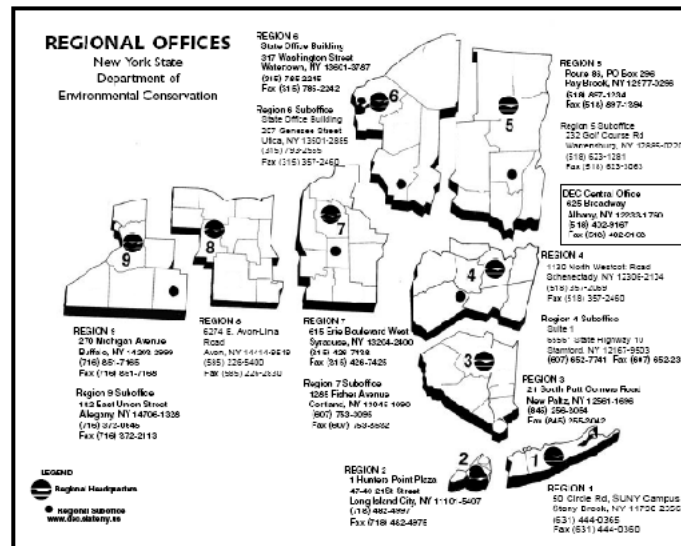
##### Once I Get My Permit, Will I Be Able to Renew, Modify or Transfer It, if Necessary?

Yes. Any request to renew, modify or transfer a permit must be in writing. Requests for permit transfers require completion of a short DEC *Application for Permit Transfer* form. DEC must then make its decision within 15 days.

In the case of a modification, the request must include an explanation of the reason for the proposed change. In cases involving substantial modifications to a project, DEC may decide that a renewal or modification will be treated as a new application.

##### Specific Questions?

Contact DEC's Environmental Permits at the appropriate regional office.



New York

## HOW TO APPLY FOR A DEC PERMIT

Applicant's Guide to the Uniform Procedures Act

New York State  
Department of Environmental Conservation  
George E. Pataki, Governor  
Erin M. Crotty, Commissioner



# Application Review Process

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- Nature of project and its potential impact on wetland acreage and functions;
- Efforts made to **avoid and minimize** project impacts;
- Need (justification) for proposal;
- Nature of any compensatory mitigation proposed.





# Permit Issuance and Denial

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➤ **ECL Article 24:**

“It is declared to be the public policy of the state to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom....,

...consistent with the general welfare and beneficial economic, social and agricultural development of the state.”



# Permit Issuance and Denial Criteria

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➤ **6 NYCRR Part 663:**

“It is the purpose of this Part to implement (Article 24) by establishing regulations that:

(1) define the procedural requirements to be followed in undertaking different activities in wetlands and in areas adjacent to wetlands;

(2) establish standards governing the issuance of permits by the Department pursuant to the Act; and

(3) govern the Department’s implementation of the Act.”



# Permit Issuance and Denial Criteria

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- **Levels of Compatibility §663.4(d)**
  - **C - usually compatible**; means that a regulated activity may be compatible with a wetland and its functions and benefits,
  - **N - usually incompatible**; means that a regulated activity is usually incompatible with a wetland and its functions or benefits,
  - **X - incompatible**; means that a regulated activity is incompatible with a wetland and its functions and benefits.

# Permit Issuance and Denial Criteria

ACTIVITIES			
ITEMS		Procedure & Compatibility by Area	
		FWW	AA
17	Draining and altering water levels, except as part of an agricultural activity.	P(X)	P(X)
18	Removing or breaching beaver dams.	P(N)	P(C)
19	Constructing, expanding, or substantially modifying drainage ditches, except as part of an agricultural activity.	P(X)	P(N)
20	Filling, including filling for agricultural purposes.	P(X)	P(N)
21	Installing or creating a dry well, retention basin, filter, open swale, or pond.	P(N)	P(N)
22	Clear-cutting trees.	P(N)	P(C)
23	Clear-cutting vegetation other than trees except as part of an agricultural activity.	P(X)	P(N)
24	Cutting but not elimination or destruction of vegetation, such that the functions and benefits of the wetland are not significantly adversely affected.	L	L
25	Grading, and dredging not included in item 26.	P(X)	P(N)



# Permit Issuance and Denial Criteria

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## □ STANDARDS FOR PERMIT ISSUANCE

- **Compatibility-** These three tests are to be used to determine the compatibility of all activities identified as P(C) or P(N) in Subdivision 663.4 (d) or for any actions not listed in subdivision 663.4 (d). If all three of the following tests of compatibility are met, no other weighing standards need be met...
- (i) would be compatible with preservation, protection and conservation of the wetland and its benefits, and
- (ii) would result in no more than insubstantial degradation to, or loss of, any part of the wetland, and
- (iii) would be compatible with the public health and welfare.



# Permit Issuance and Denial Criteria

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**Weighing** - If the proposed activity is listed as (X) or cannot meet the three tests for compatibility, then a permit may be issued only if the proposed activity meets (class-specific standards).



# Permit Issuance and Denial Criteria

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- For wetland Classes I, II, III and IV, the proposed activity must be compatible with the public health and welfare, be the only practicable alternative that could accomplish the applicant's objectives and have no practicable alternative on a site that is not a freshwater wetland or adjacent area.
- For wetland Classes I, II, and III, the proposed activity must minimize degradation to, or loss of, any part of the wetland or its adjacent area and must minimize any adverse impacts on the functions and benefits that the wetland provides.
- For wetland Class IV, the proposed activity must make a reasonable effort to minimize degradation to, or loss of, any part of the wetland or its adjacent area.



## Mitigation of Impacts

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- The applicant may propose to enhance the existing benefits provided by a wetland or to create and maintain new wetland benefits to increase the likelihood that a proposed activity will meet the applicable standards for permit issuance. Such a proposal must...
  - (i) occur on or in the immediate vicinity of the site of the proposed project;
  - (ii) be regulated by the Act and this Part after mitigative measures are completed; and
  - (iii) provide substantially the same or more benefits than will be lost through the proposed activity.





# Permit Denial

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An applicant is entitled to know the grounds upon which its permit application is denied. The grounds for denial should be presented at the time of denial, or as soon thereafter as the issue becomes known.



# Commonly Related Jurisdictional Considerations

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The Department's Project Managers administer the SEQRA & UPA process and apply regulatory standards often with the input of more technically-involved resource advocates in DEC Bureau of Wildlife or Bureau of Habitat, as well as DEC engineers, attorneys, and outside parties including the public.

This PM role and appreciation for the “big picture” is most important when there are additional jurisdictional considerations....



# Commonly Related Jurisdictional Considerations

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- Water Quality Certification
- SPDES
- Protection of Waters (Article 15)
- Aquatic Pesticide Application
- Tidal Wetlands (Article 25)



# Commonly Related Jurisdictional Considerations

## Water Quality Certifications

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- Per Section 404 of the Clean Water Act, , the US Army Corps of Engineers regulates the discharge of dredged or fill material into the waters and adjacent wetlands of the US.
- Section 401 of the CWA provides for States to certify that these Corp-granted approvals will not contravene water quality--hence DEC's need to issue (or deny) "Water Quality Certifications" for many water- or wetland-related projects.
- The Corps has preapproved many of these projects = "Nationwide Permits." DEC has preapproved the WQC for some of these NWP's = "Blanket WQC".



# Commonly Related Jurisdictional Considerations SPDES

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- No person shall discharge or cause a discharge (into the waters or groundwaters of the State) of any pollutant without a SPDES permit.
- Includes “Stormwater Permits” for construction sites >1 acres, and industrial sites
- Notable exception: Subsurface discharge less than 1,000 gallons per day of domestic sewage effluent; (DoH regulated)



# Commonly Related Jurisdictional Considerations Protection of Waters

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- Permit required to change, modify or disturb any protected stream, including its bed or banks.
- Permit required to excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in contiguous wetlands



# Commonly Related Jurisdictional Considerations

## Aquatic Pesticides

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- Permit required for the control or elimination of aquatic vegetation in any waters of the State, except for the use of copper sulfate for the purpose of algae control by a duly constituted water supply agency in its water supply waters; or for chemical control of aquatic vegetation in ponds or lakes less than 1 acre in size having no outlet to other waters and which lie wholly within the boundaries of lands privately owned or leased by the individual making or authorizing such treatment.
- Permit required for the control or extermination of undesirable fish in any waters of the State, except for chemical control of fish by the DEC on waters completely enclosed by or bordered by lands owned or leased by the Department or the State.



# Commonly Related Jurisdictional Considerations

## Tidal Wetlands ECL Art. 25

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- Under the Tidal Wetlands Act, DEC administers a permit program regulating activities in tidal wetlands and their adjacent areas. In general, tidal wetlands consist of all the salt marshes, non vegetated as well as vegetated flats and shorelines subject to tides. The adjacent areas extend up to 300 feet inland from the wetland boundary (up to 150 feet inland within New York City). DEC requires a permit for almost any activity which will alter wetlands or the adjacent areas.
- 6NYCRR Part 661





# Permit Conditioning

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- **PreConstruction:** i.e. contact DEC or others, set up silt fence and project limiting fence, inspect equipment for leaks and invasives, install construction access, have contractor read permit
- **Construction:** i.e. Keep out of the wetland and water, pump around work site, remove stockpiles, stick to plans submitted and approved
- **Post Construction:** i.e. Stabilize site, remove debris or spoils, monitor and report



# DEC v. Corps of Engineers

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- ❑ What gets regulated, i.e. fill v. numerous actions
- ❑ Where gets regulated, i.e. wetland v. wetland + adjacent area
- ❑ DEC maps v. NWI maps
- ❑ Isolated v. Size threshold (and ULI)
- ❑ Review process, i.e. SEQRA, UPA timeframes, fees
- ❑ Issuance standards
- ❑ Delineation technique
- ❑ Mitigation Requirement
- ❑ Personality of staff, i.e. Corps very nice and cooperative v. DEC



# Delineation Techniques

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- Pretty similar result to Corps most of the time
- DEC usually accepts Corps methodology, but maybe not exclusively (not vice versa)
- Results could differ:
  - Plants may suffice for DEC
  - Have additional hydric soil and hydrology criteria
  - Plants layers defined slightly different
  - Area of concern, i.e. veg. sample plot, varies slightly
  - DEC might use auger still