

Wetland Regulations - Not Just for Developers Anymore! **by Jessica DeWispelaere and Martin Janda**

For many years, wetland regulations, permitting and enforcement have generally been considered a developer's problem. Increasingly, however, municipalities are finding that routine ditch cleaning or drainage improvements, done for many years, are now regulated by the State and Federal Government. As with the development industry, the "that's the way we have done it in the past" defense doesn't work when confronting these regulations or an enforcement action. To a municipality, these issues are very dynamic and their mission is to cost effectively improve drainage, reduce flooding, and protect landowners or agricultural resources.

Most streams and their adjacent wetlands are considered "Waters of the United States," subject to state and federal regulation. Regulations are designed to minimize physical and chemical disturbance to "Waters of the United States," and typically require permits for work in streams and wetlands. Permits are issued only when the applicant can demonstrate that circumstances warrant the proposed activity and no other practicable alternative exists. As such, the approval process can be time consuming and expensive, requiring extensive coordination with regulatory agencies including the US Army Corps of Engineers (USACOE), the NYS Department of Environmental Conservation (NYSDEC), the U.S. Environmental Protection Agency, and others. Conducting such work without proper authorization constitutes a violation of state and federal law, and can be even more costly. Most often, if unauthorized activities are discovered, remediation and restoration for the affected water bodies will be required. It's not as easy as just sending a DPW crew out with a backhoe anymore!

BME has had the opportunity to work with local municipalities on both types of stream restoration projects: developing and implementing a remediation and restoration plan to correct an unauthorized stream rechannelization; and assisting a town with the permitting process for restoration of a man-made drainage ditch to address flooding issues on adjacent agricultural lands.

Mill Creek, Town of Ontario, Wayne County

BME worked with the Town of Ontario, Wayne County, USACOE, and NYSDEC on the Mill Creek Remediation Project, a significant restoration project to address the consequences of an unauthorized effort to "clean" Mill Creek. To relieve flooding along Mill Creek, the Town of Ontario hired a contractor to remove wood debris, overgrown vegetation, and other obstructions from Mill Creek. The contractor cleaned the creek, and also over excavated the creek by up to 2 feet, more than doubling the width of the creek to about 15 to 20 feet. Approximately 43,000 linear feet of the stream corridor was affected. Some excavated material was placed in adjacent jurisdictional state and federal wetlands. The end result was that the meandering, shallow stream was reconfigured into a straight, deep, highly erosive channel, and in violation of federal and state environmental law.

The stream became unstable, and began adjusting to obtain a new state of balance. The flood storage function of the Mill Creek adjacent areas was diminished, as Mill Creek was lowered and channelized.

BME Associates was hired to work with the Town of Ontario to evaluate the environmental impact of the channelization, to prepare sound remediation plans, and to assist through the construction phase of the project. The proposed work included constructing a series of large rock "vanes," rock weirs designed to hold back backfilled material and to create downstream pools to enhance creek wildlife. Some areas were treated with large rock lining, gabion mattresses, and plunge pools in combination with revegetation. Portions of the creek were relocated back into the original route, the fills placed into existing wetlands were removed, and the entire site was restored with seeding and plantings.

This violation, which USACOE initially considered an irreparable disaster, turned into a successful project with many new environmental benefits created. Impassable culverts and sections of the creek were restored, allowing an abundance of salmon and trout species to move upstream through the restored creek to spawn. The floodplain of the creek was again restored and erosion was minimized.

Commission Ditch, Town of Penfield, Monroe County

Commission Ditch in the eastern portion of the Town of Penfield was originally constructed in the 1920s to drain wet areas for agricultural use. In the ensuing years, the ditch has been prone to sedimentation and blockage, causing the adjacent agricultural lands to flood. The ditch has been cleaned several times, most recently in the early 1980s. Sedimentation and debris have once again accumulated in the ditch to the point where flooding is affecting the Town's farming community, causing them to seek the Town's help.

The Town is proposing to perform maintenance to restore Commission Ditch to its original configuration, and hired BME Associates to help develop the project and assist with the permitting process. For the last two years, BME has been working with the Town, USACOE, NYSDEC, the Monroe County Soil and Water Conservation District (MCSWCD), and the farming community to develop a project that accomplishes the goals of all involved parties. Coordination has included meetings and extensive site walks with agency representatives. USACOE and NYSDEC have recently agreed that the proposed ditch cleaning is a permissible project, but want to ensure that their concerns about adjacent wetland quality and conditions in downstream areas are addressed. They are requesting that the project provide a new riparian buffer along portions of the ditch, to improve water quality and help prevent the ditch from quickly deteriorating again. BME is now working with the Town and MCSWCD to negotiate acceptable terms to both the farming community and the permitting agencies, and is attempting to help the farming community secure federal funding available through the Farm Service Agency for implementation of conservation buffers. Programs such as these can help environmental permitting agencies and the affected community to find common ground, resulting in projects that can receive the necessary approvals and be affordable for the affected communities.