



Agriculture and Wetlands: A Compilation of Factsheets



Agriculture & Wetlands



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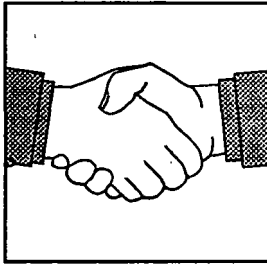
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All of the fact sheets contained in this publication may be removed and reproduced as needed. For further information call EPA's Wetlands Hotline **1-800-832-7828**.





Agriculture and Wetlands: Finding Common Ground



Wetlands are transitional areas between land and water, encompassing such diverse and complex ecosystems as prairie potholes, riparian woodlands, vernal pools, peatlands, bottomlands, marshes and swamps. Because wetlands vary widely, each individual wetland can provide different environmental functions and benefits to the public.

American farmers and ranchers provide our Nation with abundant food and fiber. Exports of agricultural products contribute greatly to the positive side of the trade ledger. Moreover, there is a strong tradition of stewardship for field and farmstead among farm families. Given the importance of food and fiber production and the complexity of varying agricultural

conditions and practices, State and Federal agencies face a considerable challenge in meeting their responsibilities to protect and restore wetland resources, while maintaining agricultural production.

Studies continue to reveal more about the functions of wetlands and the public benefits provided by these environments. These benefits include:

- Food and habitat for fish and wildlife
- Shoreline and streambank erosion control
- Natural products for human use
- Groundwater discharge and recharge
- Water quality improvement
- Recreation
- Flood protection
- Commercial and sport hunting, fishing, and trapping
- Maintaining biodiversity and open space

The protection of the Nation's wetland resources has increased in recent years due to a better understanding of wetland values and functions. Concerns intensified during the early 1980s, when a U.S. Fish and Wildlife Service survey of the status and trends of wetlands in the lower 48 States indicated that over 9 million acres of

wetlands had been lost between the mid-1950s and mid-1970s, representing an average annual loss of 458,000 acres. Recent surveys indicate that the rate of wetlands loss has declined between the mid-1970s and 1980s. Even so, the Nation's critical remaining wetland acreage continues to decline. Of our historic wetlands, only an estimated 50 percent remain.

There are many causes of the continuing loss and modification of wetland environments, including fill and excavation activities, drainage, clearing, chemical discharges, and changes in water levels and sediment loads. Agricultural practices involving these activities can harm wetlands.

To find common ground between wetlands protection and agriculture, the EPA and other Federal agencies have taken steps to clarify what agricultural practices do or do not require permits under Section 404 of the Clean Water Act. In 1977, Congress amended the Clean Water Act to specifically list agricultural activities exempt from regulation under Section 404, even though they occur on "jurisdictional wetlands." Also, steps were taken to issue general permits for common agricultural practices, such as cleaning drainage ditches, to reduce the administrative burden on individual farmers.



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Agriculture and Wetlands: Finding Common Ground

General permits are national, State or regional authorizations to place fill for certain purposes or in limited quantities. Some general permits allow work to proceed without individual notice to or review by the Government.

More recently, the U.S. Corps of Engineers issued field guidance regarding agricultural activities in wetlands. This guidance clarifies that "prior converted cropland," as defined by the Swampbuster program, will not be regulated under the 404 program, regardless of the nature of the fill activity which takes place. In addition, Federal and State agencies are working together to resolve technical and policy issues surrounding wetland protection, providing the landowner (farmer) with a more consistent approach toward wetland delineation and regulation. In the course of these efforts, EPA is seeking to inform the public of our

progress and to solicit the opinions and ideas of interested parties.

As part of our effort to improve communications with the agricultural community, EPA has prepared a series of fact sheets on Federal wetlands protection activities. This initial set of fact sheets provides general information on six subjects:

- **The Roles and Responsibilities of Federal Agencies in Protecting and Managing Wetlands**
- **Opening Communications and Finding Answers**
- **Section 404 and Swampbuster**
- **The Federal Manual for Identifying and Delineating Jurisdictional Wetlands**
- **Section 404(f) Exemptions and Nationwide General Permits**
- **Studies and Research to Improve Our Knowledge**

We encourage fact sheet readers to comment on these issues and to request additional information, by either calling EPA's Wetland Protection Hotline (1-800-832-7828) or writing:

Office of Wetlands, Oceans and Watersheds
Wetlands Division
U.S. Environmental Protection Agency (WH-556F)
401 M Street, SW
Washington, D.C. 20460

or contacting:

your EPA Regional Office
Wetlands Protection Program
(see addresses below)

EPA Regional Offices

EPA - Region I
John F. Kennedy Federal Bldg.
One Congress Street
Boston, MA 02203
(617) 565-4940

EPA - Region II
26 Federal Plaza
New York, NY 10278
(212) 264-2657

EPA - Region III
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-9800

EPA - Region IV
345 Courtland Street, NE
Atlanta, GA 30365
(404) 347-4727

EPA - Region V
230 S. Dearborn Street
Chicago, IL 60604
(312) 353-2000

EPA - Region VI
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 655-2263

EPA - Region VII
726 Minnesota Avenue
Kansas City, KS 66101
(913) 551-7573

EPA - Region VIII
999 18th Street
Denver, CO 80202-2405
(303) 293-1603

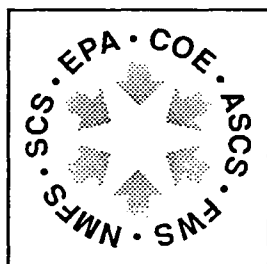
EPA - Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-1971

EPA - Region X
1200 6th Avenue
Seattle, WA 98101
(206) 442-1200



Agriculture and Wetlands:

The Roles and Responsibilities of Federal Agencies in Protecting and Managing Wetlands



The Federal Government supports a broad array of activities that address wetlands protection and management, ranging from research, mapping, planning, and acquisition to management. These activities are spread among numerous Federal agencies. In some cases, the linkage of these programs to wetlands protection and management is straight forward. For example, the Section 404 permitting program under the Clean Water Act (CWA) requires permits for discharges of dredged and fill materials in waters of the United States, including wetlands. In a number of other cases, however, the effects of Federal programs are more subtle or

indirect. For example, Federal assistance programs and tax structures can create economic incentives that encourage wetlands protection or wetlands alteration by private citizens.

The Federal government is continuing to examine its programs to identify their positive and negative effects on our Nation's wetlands and agriculture. In addition, Federal agencies that have principal roles in wetlands protection and management are working together closely to coordinate their efforts and achieve consistency in the application of terms and operational procedures.

EPA's principal partners in these efforts include: the U.S. Army Corps of Engineers (COE), the Soil Conservation Service (SCS), the Agricultural Stabilization and Conservation Service (ASCS), the Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS).

□ **COE:** Reviews permit applications, and issues and enforces permits under Section 404 of the CWA, regulating the discharge of dredged or fill material into waters of the United States,

including most wetlands. COE District Offices can assist farmers in determining whether wetlands on their property are subject to the Section 404 program and, if so, in determining whether or not planned activities would require a permit under Section 404. Farming activities such as routine cultivation, seeding, and harvesting are not subject to Section 404. Other farming activities may be authorized through a general permit, and thereby do not require an individual permit.

□ **EPA:** Shares responsibilities under the Section 404 program with the COE. EPA developed the environmental guidelines used by the COE in evaluating permit applications. EPA shares responsibilities under the Section 404 program with the COE in reviewing and commenting on Section 404 applications, determines the applicability of Section 404(f) exemptions, and shares responsibility with the COE for enforcement of Section 404 provisions. EPA also has veto authority over COE permit decisions through Section 404(c). In addition, EPA



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administers the State wetlands grant program, develops guidance for States on wetlands water quality standards, and works with Federal, State, and local governments to encourage the adoption of non-regulatory wetlands protection and management programs.

□ **SCS:** Provides technical assistance to farmers regarding the Swampbuster provisions of the Food Security Act, a program that restricts Federal farm benefits for persons who drain their wetlands. SCS assists farmers in identifying the presence of wetlands and determining whether they would be subject to Swampbuster provisions. SCS identifies areas as natural wetlands, farmed wetlands, or prior converted croplands. SCS also determines whether agricultural production would destroy the natural characteristics of identified wetlands or would have only minimal impacts on the hydrological characteristics and biological functions of identified wetlands. In addition, SCS provides technical planning assistance to landowners under the Wetlands Reserve Program.

□ **ASCS:** Administers the Swampbuster provisions of the Food Security Act. ASCS also

manages specified commodity and related land use programs designed for voluntary production adjustment, resource protection, and price, market, and farm income stabilization. Under Swampbuster, the ASCS is responsible for determining when wetland conversions occurred, whether conversions were caused by a third party, and when agricultural commodity crops were planted. These determinations are usually made in part by State ASCS committees and county ASCS committees in consultation with the FWS. In addition, ASCS administers the Wetlands Reserve Program, a program that purchases easements from farmers to restore wetlands on their property.

□ **FWS:** Has an important advisory role under Section 404 and Swampbuster. The FWS reviews Section 404 permit applications, evaluating the potential harm of proposed activities to fish and wildlife, including threatened or endangered species or their critical habitat. Under the Swampbuster program, the FWS provides assistance to the SCS in making wetland determinations and provides technical assistance on Wetlands Reserve Program plans and other wetland issues. The

FWS also undertakes a regular large-scale assessment of the status and trends of the Nation's wetlands, and administers a wetland restoration program on public and private lands.

□ **NMFS:** Comments on Section 404 permit applications, with emphasis on potential impacts of proposed discharges of dredge or fill materials on marine and anadromous species, including threatened or endangered species and their habitat.

Many of these agencies are conducting wetland determinations, often for different reasons. The FWS identifies wetlands as part of their inventory. SCS defines wetlands under the Swampbuster program. The COE and EPA conduct or review wetland delineations as part of their permit review. Because there are different Federal programs, activities that fall under one program may or may not fall under another. Therefore, it is necessary for farmers to check with the appropriate Federal or State agency (e.g., COE for filling and SCS for Swampbuster) before proceeding with a specific project.



Agriculture and Wetlands: Opening Communications and Finding Answers



The U.S. Environmental Protection Agency (EPA) is committed to helping local and State agency staff, farmers, and the general public learn more about the functions and benefits of wetlands. EPA is also committed to listening to the public, helping answer their questions, and solving their problems. Here are a few examples of how EPA is working to maintain and improve the lines of communication.

Wetlands Protection Hotline

EPA's Wetlands Protection Hotline is a toll-free telephone service established in 1991 to respond to public inquiries about wetlands. The hotline is staffed by information specialists who are knowledgeable about wetland regulatory, programmatic, and policy issues and about wetland biology and science. These information specialists can provide farmers with information and publications on various types of public and private wetlands management and protection activities. When necessary, referrals are provided to the appropriate Agency and or outside experts for more specific information. The toll-free number is 1-800-832-7828. The Hotline operates Monday through Friday (except Federal holidays) from 9:00 a.m. to 5:30 p.m., Eastern Standard Time.

Public Outreach Activities

To increase communication between the agricultural community and EPA, the Wetlands Division of EPA's Office of Wetlands, Oceans and Watersheds sponsors conferences and public presentations, and develops informational material on wetlands and agriculture. Recent efforts include two conferences, one in February 1991 jointly sponsored with the National Governors Association (NGA) and a national symposium on "Altered, Artificial, and Managed Wetlands" held in September 1991 in conjunction with the Association of State Wetland Managers.

EPA representatives are available to give presentations and attend meetings on wetlands protection and management at agricultural conferences, meetings and symposia. In the past, EPA has participated in agricultural conferences hosted by the American Farmland Trust, the National Association of Conservation Districts, the Soil and Water Conservation Society, and the American Farm Bureau. If you are interested in inviting an EPA representative to participate in an upcoming meeting or conference, just contact EPA's Wetland Protection Hotline for the wetlands contact in the EPA Regional office that includes your state.



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Agriculture and Wetlands: Opening Communications and Finding Answers

Publications are another part of EPA's outreach efforts. EPA was one of 55 co-sponsors of American Wetlands Month (May 1991), assisting in the development of educational materials about wetlands. EPA also jointly produced with NGA a brochure called "A Guide to Agricultural Wetlands Protection."

Wetlands Grants Program

EPA has a grants program to support State efforts to develop wetlands protection programs. State agencies, as well as Indian Tribes, are eligible to apply for funds to be used in developing new or enhancing existing state wetlands protection programs. Funding for this grant program has increased from \$1 million in 1990 to \$5 million in 1991. Past grants have supported a wide variety of projects, including development of State wetlands conservation plans, wetlands water quality standards, wetlands status and trends monitoring, and wetlands planning initiatives. Farmers may want to contact their State agencies to support innovative wetlands programs in their areas.

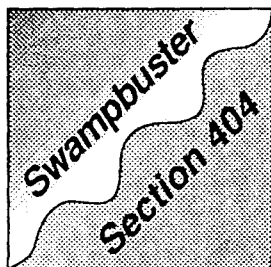
Wetland Grant Projects that are Related to Agriculture

- Delaware is addressing the feasibility of wetlands restoration on marginal agricultural lands and demonstrating the multiple use values of wetlands to the farm community.
- North Carolina is undertaking two projects: the establishment of a public outreach program for the agricultural community and the monitoring of State success in implementing its recently enacted no-net-loss law.
- Virginia is assessing the role of agricultural activities in the conversion and degradation of non-tidal activities

For more information about these and other grant projects, request the Catalog of State Wetlands Protection Grants from EPA's Wetlands Hotline (1-800-832-7828) or contact your regional EPA office.



Agriculture and Wetlands: Section 404 and Swampbuster



The two most important Federal wetlands programs that directly affect farmers are the Section 404 permitting program and the Swampbuster program. Section 404 of the Clean Water Act requires that individuals obtain a permit from the U.S. Army Corps of Engineers (COE) before discharging dredged or fill material into waters of the United States, including most wetlands. The Swampbuster program under the Food Security Act is intended to discourage the alteration of wetlands by withholding certain Federal farm program benefits from farmers who convert or modify wetlands.

Section 404 permitting and Swampbuster provision requirements are complex and can be confusing. The Federal agencies involved are actively working together to improve program coordination, and to clarify the relationship between Section 404 and Swampbuster. For example, the COE recently excluded "prior converted croplands" from regulation under Section 404 to be consistent with Swampbuster.

Section 404 Provisions

Perhaps the most important information for farmers regarding Section 404 is that most routine, ongoing farming activities do not require individual Section 404 permits. Section 404 permitting requirements apply only to discharges of dredged or fill materials in wetlands, streams, rivers, and "other waters of the United States." In general, farming activities that occur in non-wetland areas or that do not involve discharges of dredged or fill material do not require Section 404 permits.

Farming Activities that are Exempt from Section 404

- Established (i.e., ongoing), normal farming activities
 - plowing
 - seeding
 - cultivating
 - harvesting
 - minor drainage
- Maintenance (but not construction) of drainage ditches
- Construction and maintenance of irrigation ditches
- Construction and maintenance of farm or stock ponds
- Construction and maintenance of farm roads, in accordance with best management practices



For further information call EPA's Wetlands Hotline 1-800-832-7828

Agriculture and Wetlands: Section 404 and Swampbuster

Even those normal farming, silviculture and ranching activities that involve discharges of dredged or fill materials into waters of the United States are exempted from Section 404, and do not require notification or submission of a permit application to the COE. In order to be exempt, the farming activities must be part of an ongoing farming operation and cannot be associated with bringing a wetland into agricultural production or converting an agricultural wetland to a non-wetland area.

Swampbuster Provisions

The Swampbuster provision of the 1985 Food Security Act, as amended by the Food, Agriculture, Conservation and Trade Act of 1990, withholds Federal farm program benefits to any person who:

- plants an agricultural commodity on a converted wetland that was converted by drainage, dredging, leveling or any other means after December 23, 1985; or
- converts a wetland for the purpose of or to make agricultural commodity production possible after November 28, 1990.

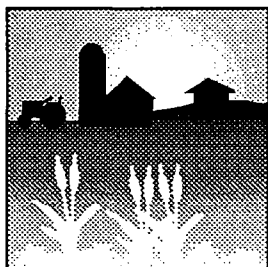
Most wetlands converted to agricultural use prior to December 23, 1985 are exempt from the Swampbuster provision. Farmers are asked to report on whether they plan to or have altered any "wet area" when they apply for their farm benefits (Form AD 1026). The Soil Conservation Service (SCS) assists farmers in making wetland determinations with regard to the Swampbuster program.

To make sure you maintain your benefits under the USDA farm program, contact the Soil Conservation Service before clearing and stumping, draining or manipulating any wet areas on your land.

Also check with the COE district office if you are unsure whether ongoing or planned activities occurring in wetlands are regulated under the Section 404 program.



Agriculture and Wetlands: The Federal Manual for Identifying and Delineating Jurisdictional Wetlands



Background on the Federal Manual

Before a Federal Manual was published, the four Federal agencies [U.S. Army Corps of Engineers (COE), the Soil Conservation Service (SCS), the Fish and Wildlife Service (FWS), and EPA] with principal responsibilities for wetlands protection and management used different methods for identifying wetland boundaries. For example, the COE had developed their own manual to identify and delineate a wetland in 1987. Variations in the methods used by these agencies at times resulted in differing determinations of wetland boundaries.

To remedy this, the four agencies worked together to produce a single manual, the 1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands." The agencies agreed to field test the 1989 Federal Manual for one year and then jointly consider the need for revision or clarification. The 1989 Federal Manual is currently in the process of revision. The COE will use their 1987 manual until revisions to the 1989 manual have been reviewed through public comment and formal rule-making procedures.

Opportunities for Public Participation

As part of the process of revising the 1989 Federal Manual, the four agencies first solicited public comments through a number of public meetings, and then published proposed changes to the 1989 Federal Manual on August 14, 1991 in the *Federal Register*. On December 19, 1991, proposed rules to codify some parts of the proposed revisions to the 1989 Federal Manual also were published in the *Federal Register*. The public comment period for both the proposed changes to the 1989 Manual and the proposed rules ended January 21, 1992. More than 70,000 comments were received. These comments will be considered as revisions to the 1989 Manual are finalized. In the meantime, the COE will continue to use its 1987 manual for wetlands delineations. As available, information on the status of the proposed revisions to the 1989 Federal Manual can be obtained from EPA's Wetland Protection Hotline at 1-800-832-7828.



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Agriculture and Wetlands: The Federal Manual for Identifying and Delineating Jurisdictional Wetlands

Proposed Revisions to the Manual

Wetlands are transition areas between land and water; as such, they are highly variable. The 1989 Federal Manual examines three parameters when determining whether an area is identified as a wetland: (1) hydrology, (2) soils and (3) vegetation. To qualify as a "jurisdictional wetland," all three parameters must be met. The proposed revisions to the 1989 Manual require the area to be inundated for at least 15 consecutive days or saturated to the surface for at least 21 days during the growing season, except in the case of specific types of wetlands, such as prairie pot-holes, playa lakes, and vernal pools. The soils must be characteristic of hydric soils, those produced under saturated ground conditions. The vegetation must be characteristic of hydrophytic vegetation, vegetation found living in saturated or flooded soils.

The 1989 Federal Manual provides guidance on how to collect and use field indicators (e.g., the presence of standing water) for wetland determination. Proposed major changes in the 1989 Federal

Proposed Major Revisions to the 1989 Federal Manual Would:

- Clarify the criteria for defining wetlands and the procedures for their delineation
- Use more reliable indicators of soil, vegetation, and hydrology to meet the three criteria
- Clarify that all three criteria must be met for an area to be classified as a wetland, except in limited, specified circumstances
- Account for special local conditions, including growing season and certain hydric soil phases

Manual would have the effect of increasing the burden of proof required to identify and delineate wetlands by clarifying and restricting the manner in which field indicators are to be used in making determinations.

It is important to remember that a determination of an area as a wetland does not necessarily restrict how that area can be used. Section 404 exempts most continuing routine farming operations. Where an activity is subject to Section 404, it may fall under a general permit to discharge dredged or fill material and, therefore, may

not require individual permitting or prior notification to the government. Even if an individual permit is required, land may be used for certain farm activities.

Individual permits annually authorize several thousand projects after determining that they are the "least damaging practicable alternative" and, when appropriate, the applicant creates or restores wetlands to replace those which are destroyed. Most permits are issued in a matter of weeks or months. Farmers opting to convert wetlands to agricultural uses should be aware, however, that they may forfeit farm program benefits.



Agriculture and Wetlands: Section 404(f) Exemptions and Nationwide General Permits

Farmers are often concerned about how agricultural activities may be regulated under Federal laws to protect wetlands. Section 404 (§404) of the Clean Water Act provides for the regulation of discharges of dredged or fill material into waters of the United States, including wetlands. Permits issued by the U.S. Army Corps of Engineers (Corps) are the mechanism for regulating these discharges. In another related law, the Swampbuster provision of the 1985 Food Security Act, Federal farm benefits for persons who drain their wetlands are restricted.

If you are considering carrying out an activity in an area that may be a wetland, this factsheet and flowchart will help you to determine what type of Section 404 permit, if any, may be required and whether Swampbuster may apply.

Farming activities that do not require Section 404 permits

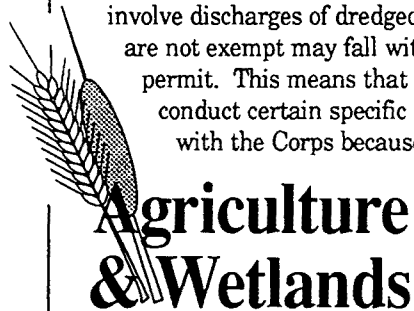
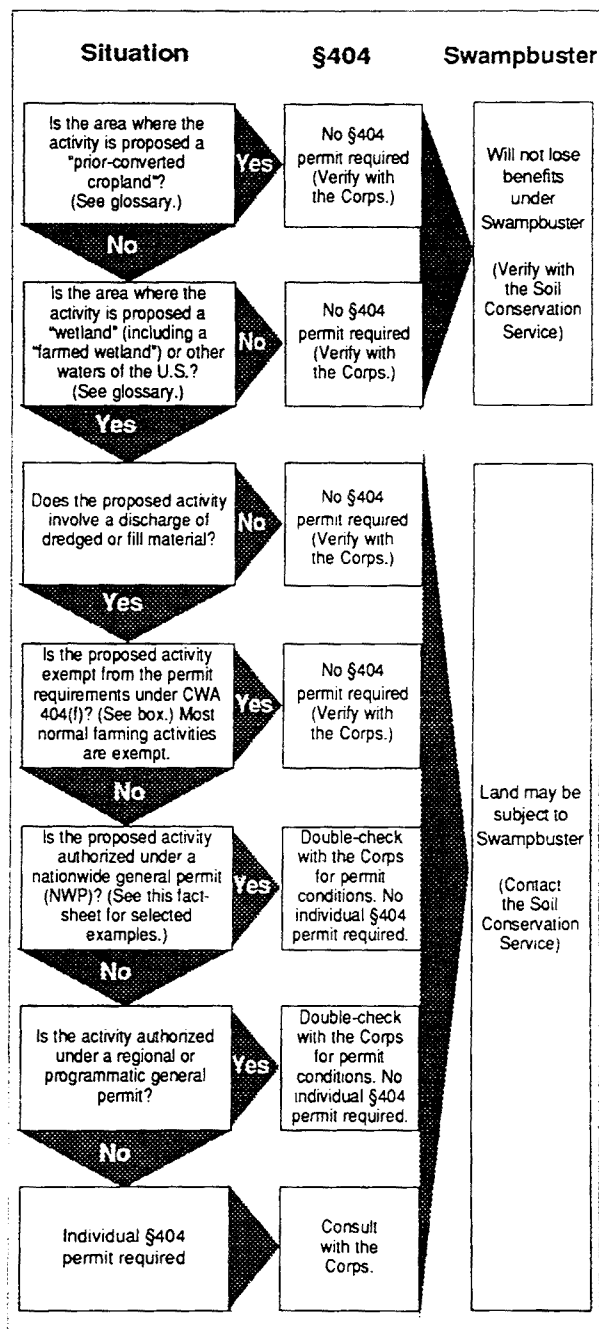
Activities that occur in upland areas, including prior-converted croplands (see glossary), do not require Section 404 permits.

Activities that do not involve the discharge of dredged or fill material into waters of the United States, including wetlands, do not require Section 404 permits. Examples of such activities include applying pesticide and fertilizer, haying, planting wind breaks, and using drainage pumps.

Also, many ongoing farming activities that involve such discharges are exempt and, therefore, do not require a Section 404 permit. These activities are listed in this factsheet under Section 404(f) Exemptions.

Farming activities that may require Section 404 permits

There are two types of Section 404 permits: general and individual permits. Many farming activities that involve discharges of dredged or fill material and that are not exempt may fall within the scope of a general permit. This means that farmers would be able to conduct certain specific activities after checking with the Corps because a general permit has



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Agriculture & Wetlands: Section 404(f) Exemptions and Nationwide General Permits

Glossary

NOTE: To determine whether the area in which you intend to work is subject to Swampbuster, contact the Soil Conservation Service (SCS) prior to beginning work. The SCS will determine whether the area is a prior-converted cropland, a farmed wetland, or neither. Contact the Corps to determine whether your land contains a wetland and whether the wetland is covered by regulation under Section 404 of the Clean Water Act.

Prior-converted cropland is not a wetland within the meaning of the EPA and Corps definition of a wetland. As a result, activities in prior-converted croplands are not regulated under Section 404 of the Clean Water Act. For an area to be designated as prior-converted cropland, it must meet the following conditions:

- The area was drained, dredged, filled, leveled, or otherwise manipulated for the purpose of, and continues to be used for, production of an agricultural commodity;
- This manipulation or conversion occurred before December 23, 1985;
- The area has undergone generally extensive and relatively permanent modifications to its hydrology and vegetation; and
- The area has not been abandoned since it was designated as prior-converted cropland. Abandonment occurs after 5 years have elapsed without any agricultural commodity being produced. Any crop rotation must include the planting of an agricultural commodity once every 5 years.

Wetlands are defined by EPA and the Corps as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. . . ."

Farmed wetlands are wetlands that have been manipulated, usually by drainage, and used for agricultural commodity production, but also are wet long enough to be wetlands subject to Swampbuster and Section 404 of the Clean Water Act. Manipulation and cropping must have occurred prior to December 23, 1985. Farmed wetlands include potholes and playas that are manipulated and planted with an agricultural commodity, but are ponded for 7 or more consecutive days during the growing season under average conditions, and other manipulated and cropped areas that have surface water present for at least 15 consecutive days or 10 percent of the growing season, whichever is less under average conditions.

Agricultural commodity refers to crops produced by annual tillage of the soil or sugar cane. The term is an important part of the definition of prior-converted cropland and farmed wetlands. Prior-converted croplands can be redesignated as wetlands subject to Swampbuster and Section 404 of the Clean Water Act if not used for the production of an agricultural commodity for a long enough period of time and wetland conditions return.

already been issued to the public-at-large.

There are three types of general permits: nationwide general permits, regional general permits, and programmatic general permits. This fact sheet discusses nationwide general permits in more detail to give readers an idea of what types of activities may already be authorized under a general permit.

In any case, contact your local Corps district to find what conditions may apply to activities under the nationwide general permit and what regional

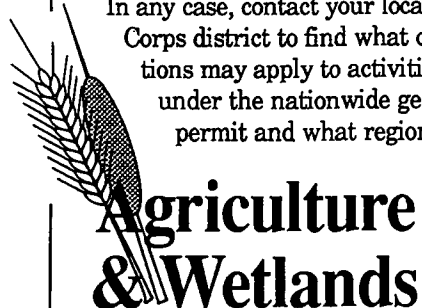
general or programmatic general permits exist.

If the farming activity involves a discharge of dredged or fill materials into waters of the U.S. and it is not exempt or not covered under a general permit, an individual Section 404 permit is needed.

Section 404(f) Exemptions

Discharges of dredged or fill material associated with certain farming activities do not require notification or application to the Corps for a Section 404 permit because those activities are specifically exempt from permitting requirements under Section 404(f). To be exempt, an activity cannot be asso-

ciated with bringing wetlands into agricultural production or changing the use of a wetland that is currently in agricultural production (for example, silviculture to farming). The discharge must also meet two conditions: it cannot contain any toxic pollutants (as defined by the Clean Water Act), and it cannot reduce the reach of or impair the flow or circulation of waters of the United States. While the Section 404(f) exemptions do cover minor drainage activities associated with ongoing farming, a Section 404 permit is required for drainage activities that involve a discharge of dredged or fill material and are associated with the gradual or immediate



Agriculture & Wetlands: Section 404(f) Exemptions and Nationwide General Permits

Farming Activities Exempt from Section 404

- Established (i.e., ongoing), normal farming activities
- plowing
- seeding
- cultivating
- harvesting
- minor drainage
- Maintenance (but not construction) of drainage ditches
- Construction and maintenance of irrigation ditches
- Construction and maintenance of farm or stock ponds
- Construction and maintenance of farm roads in accordance with best management practices

conversion of a wetland to a non-wetland (e.g., replacing a wetland plant species with an upland species not typically adapted to saturated soil conditions).

General Permits

General permits are widely used and speed up the Section 404 permitting process because they do not require a detailed, case-specific review.

General permits are issued to the public-at-large and authorize certain activities in wetlands and other waters. Although there are three types of general permits (nationwide general permits, regional general permits, and programmatic general per-

mits), this factsheet only discusses selected nationwide general permits in more detail to give readers an idea of what type of activities may already be authorized under a general permit.

Brief Descriptions of Selected Nationwide General Permits (NWP)

□ **NWP No. 3 Maintenance** allows farmers to repair, rehabilitate, or replace any previously authorized, currently serviceable structure or fill—provided the structure or fill is not being put to different uses from those specified in the original permit.

□ **NWP No. 12 Utility Line Backfill and Bedding** authorizes discharges of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. This permit does not apply to tile or similar drainage works (with the exception of pipes conveying drainage collected from another area). Certain conditions must be followed to reduce impacts on the environment.

□ **NWP No. 13 Bank Stabilization** allows landowners to stabilize banks necessary for erosion prevention as long as the activity complies with conditions outlined in the general permit. For example, bank stabilization materials may not be placed in wetlands or other special aquatic sites.

□ **NWP No. 14 Road Crossing** allows fills for roads crossing waters of the United States, including wetlands, provided that the activ-

ity complies with conditions outlined in the permit. For example, the fill placed in waters of the U.S. is limited to an area no more than $\frac{1}{3}$ acre.

□ **NWP No. 18 Minor Discharges** authorizes discharges that (1) do not exceed 25 cubic yards and (2) will not cause the loss of more than $\frac{1}{10}$ acre of wetlands. If the fill site will exceed more than 10 cubic yards or is located within special aquatic sites, such as wetlands, then the Corps must be notified before starting work. The permit also authorizes minor discharges, including all attendant features, both temporary and permanent, that are part of a single and complete project and that are not placed for the purpose of stream diversion.

□ **NWP No. 26 Headwaters and Isolated Waters Discharge** authorizes discharges of dredged or fill material into "headwaters," including adjacent wetlands, or into "isolated waters," provided the discharge does not cause the loss of more than 10 acres of wetland and meets other conditions. One condition requires that the Corps be notified before starting work if the discharge will cause the loss of more than one acre of wetland. "Headwaters" are generally those small-flow waters upstream of the point on the river or stream at which average annual flow is less than 5 cubic feet per second. "Isolated waters" are generally those waters that are not connected or adjacent to other surface waters. Wetland "loss" includes the filled area plus other waters adversely

Agriculture & Wetlands: Section 404(f) Exemptions and Nationwide General Permits

Activities authorized by these nationwide general permits usually include certain conditions, such as using best management practices or notifying the Corps before starting work. Therefore, contact the Corps to ask what, if any, requirements exist.

Your Corps District can also help you in obtaining more information about activities that are allowed under programmatic general permits or regional general permits in your area. If the activity you want to carry out requires an individual permit, the Corps also can assist you.

To locate the name and phone number of your Corps District and Soil Conservation Service field office, call: **EPA's Wetlands Hotline: 1-800-832-7828**

affected by flooding, excavation, or drainage as a result of a project.

□ **NWP No. 27 Wetland and Riparian Restoration and Creation Activities** authorizes discharges associated with (1) restoration projects of altered or degraded wetlands or riparian areas and (2) the creation of wetlands or riparian areas. This permit may apply to wetland restoration and creation activities on private lands as long as the activities are in compliance with agreements made between the landowner and the Soil Conservation Service or the Fish and Wildlife Service. This permit does not authorize the conversion of natural wetlands to another aquatic use, such as the creation of waterfowl impoundments where a forested wetland previously existed.

□ **NWP No. 34 Cranberry Production Activities** permits activities associated with the expansion, enhancement, or modification of existing cranberry operations provided that (1) the total acreage of disturbance does not exceed 10 acres of wetlands and other waters regulated under Section 404 and (2) the ac-

tivity does not result in a net loss of wetland acreage. This permit does not apply to such activities related to cranberry production as the construction of warehouses, processing facilities, or parking lots. The Corps must be notified before starting work.

□ **NWP No. 37 Emergency Watershed Protection** authorizes work done or funded by the Soil Conservation Service under its Emergency Watershed Protection Program or by the Forest Service under its Burned-Area Emergency

Rehabilitation program. The Corps must be notified before starting work.

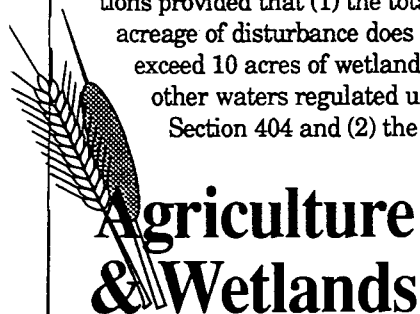
□ **NWP No. 40 Farm Buildings** authorizes discharges of dredged or fill material into farmed wetlands for the construction of farm buildings and other structures necessary for farming activities. This permit does not allow discharges into specific types of wetlands (that is, prairie potholes, playa lakes, or vernal pools) and limits discharges to less than one acre.

How does the Swampbuster program relate to Section 404 permits?

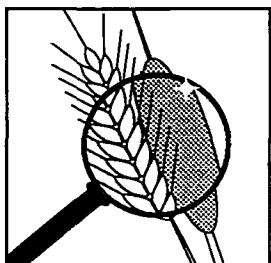
Under the Swampbuster provision of the 1985 Food Security Act, as amended, Federal farm program benefits are withheld from any person:

- Who plants an agricultural commodity on a converted wetland that was converted by drainage, dredging, leveling or any other means after December 23, 1985; or
- Who converts a wetland for the purpose of or to make agricultural commodity production possible after November 28, 1990.

Generally, the areas subject to regulation under Section 404 and Swampbuster are the same; for example, prior-converted croplands are not covered by the provisions of Swampbuster and Section 404. However, there may be differences, and an area may be subject to requirements under one program and not under the other. To make sure you maintain your benefits under the U.S. Department of Agriculture's farm program, contact your local Soil Conservation Service agent before clearing and stumping, draining, or manipulating any wet areas on your land.



Agriculture and Wetlands: **Studies and Research to Improve Our Knowledge**



Wetlands are diverse and complex ecosystems that vary widely in terms of the environmental functions they perform and benefits they provide to the public. Given the added complexity of varying agricultural conditions and crop production practices, State and Federal agencies face a considerable challenge in meeting their responsibilities to protect and restore wetland resources, while maintaining agricultural production.

The U.S. Environmental Protection Agency (EPA), in cooperation with others, carries out an extensive program of studies and research on wetlands and explores options for their protection and management. A major focus has been to improve our scientific understanding of how wetlands function, how they respond to certain management practices, and how they recover from damage. By improving our knowledge, EPA hopes to be able to pro-

EPA's Five-year Wetlands Research Strategy Involves:

- Studying wetlands ecology
- Developing methods for characterizing and comparing the functions of different types of wetlands, including natural undisturbed wetlands, those which have been restored, and wetlands that have been converted or altered for the purposes of cultivating crops
- Evaluating the functions of wetlands, such as improving water quality and contributing to biodiversity

vide farmers with better guidance about managing and protecting their wetlands.

The results of EPA's research will be used in developing a risk-based framework for wetlands protection and management, designed to ensure that important wetland functions, and the benefits they provide, are protected. EPA will place highest priority on studying five types of wetlands: freshwater emergent marshes, bottomland hardwood forests, Western riparian areas, prairie potholes, and coastal wetlands. A major study will be conducted in the Prairie Pothole Region that will include several research projects specifically related to agriculture.

Objectives of Selected Prairie Pothole Research Projects

- To study the impact of agricultural drainage and nonpoint source pollution on wetland loss and degradation in the Prairie Pothole Region
- To develop criteria for protecting prairie pothole wetlands from the effects of sediment and sediment-associated pollutants
- To develop criteria for buffer widths for protecting prairie pothole wetlands from non-point source pollution
- To examine the potential use of prairie pothole wetlands to improve surface water quality

EPA continues to refine our research strategy by consulting with many groups, including representatives of the agricultural community. For example, the Agency is currently conducting a agricultural outreach project with the Association of State Wetland Managers. One of the work products from this outreach effort will be a white paper that focuses on traditional farming practices on drained and/or undrained wetland areas and their impacts on wetland functions and benefits. Crops tentatively selected for discussion include cranberries, soybeans, wheat, rice, corn, oranges, hay, and cultured fish and shellfish.



Agriculture & Wetlands

For further information call EPA's Wetlands Hotline 1-800-832-7828