

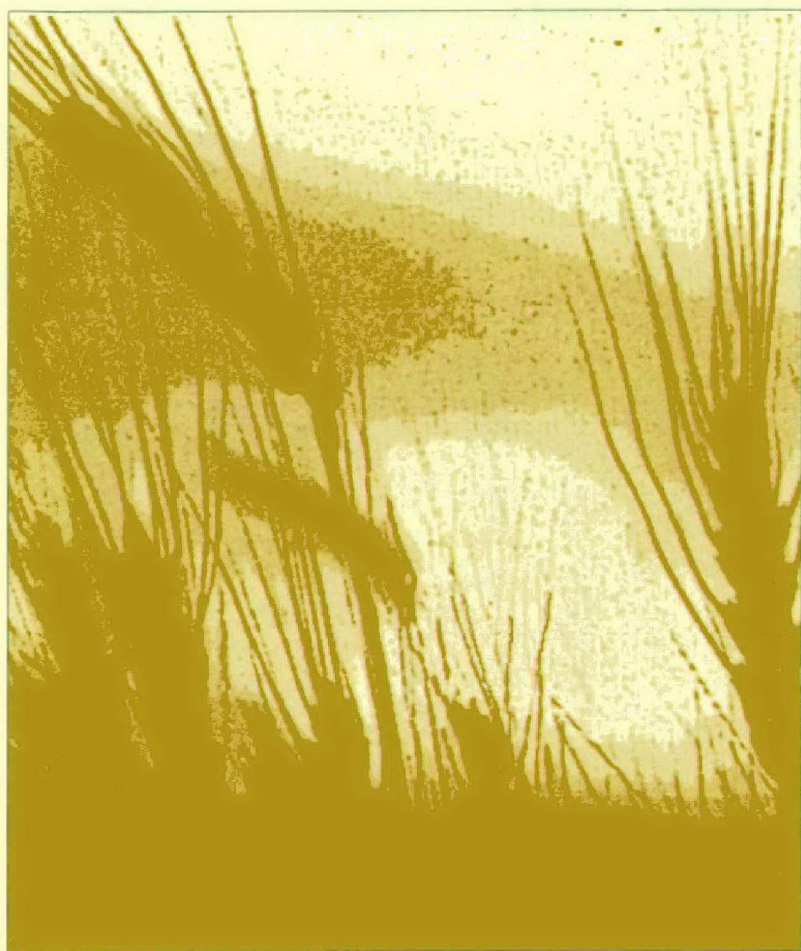


United States  
Environmental  
Protection Agency

Office of Water  
Washington, D.C.

EPA 843-F-93-002  
Summer 1993

# Farming and Section 404 of the Clean Water Act



**Agriculture  
& Wetlands**

## **What are wetlands?**

They are areas that are inundated or saturated by surface or ground water 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. For further guidance on whether your land contains wetlands, contact your local Army Corps of Engineers (Corps) district. The Environmental Protection Agency (EPA) and the Corps use the *Corps of Engineers Wetlands Delineation Manual* in making wetlands determinations under the Clean Water Act (CWA) Section 404 regulatory program.

## **What is the Swampbuster provision?**

The Swampbuster provision of 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.

## **What does Section 404 require?**

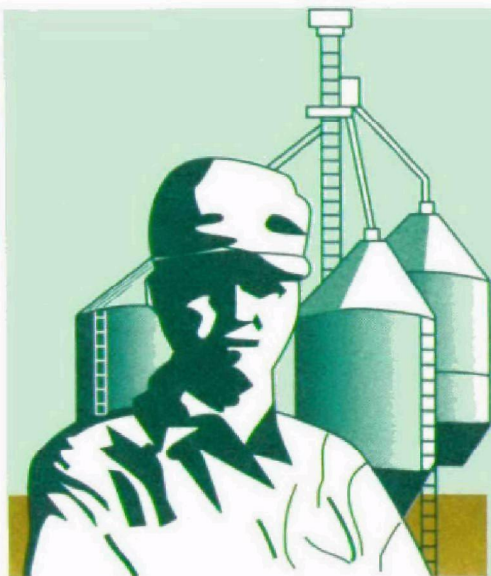
CWA Section 404 requires that a landowner obtain a permit from the Corps for any non-exempt activity involving the placement of dredged or fill material in waters of the United States, including wetlands. Certain ongoing, normal farming practices in wetlands do not require a permit. See inside for examples of exempted activities.

## **How does the Swampbuster program relate to CWA Section 404?**

Generally, the areas subject to regulation under Swampbuster and CWA Section 404 are the same, but there are subtle differences. Before beginning any non-exempt activity impacting a wetland, contact your local Corps district office or Soil Conservation Service agent.

## **What are prior-converted croplands?**

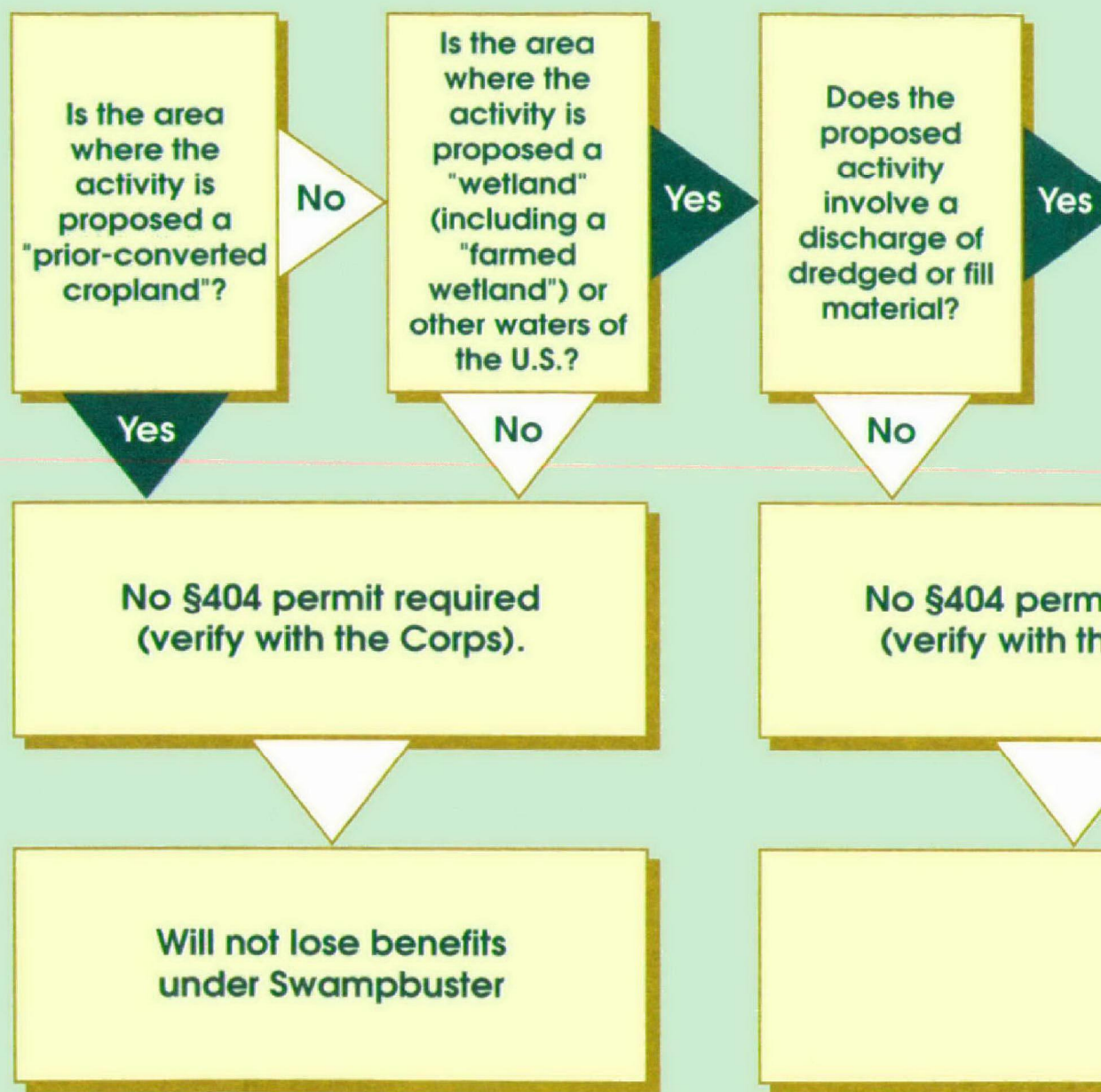
Prior-converted croplands are not wetlands under the EPA and Corps definition of a wetland. As a result, activities in prior-converted croplands are not regulated under CWA Section 404. For an area to be designated as prior-converted cropland, it must meet the following



## **Farming Activities that are Exempt from Section 404†**

- Established (i.e., ongoing), normal farming activities
  - plowing
  - harvesting
  - seeding
  - minor drainage
  - cultivating
- 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





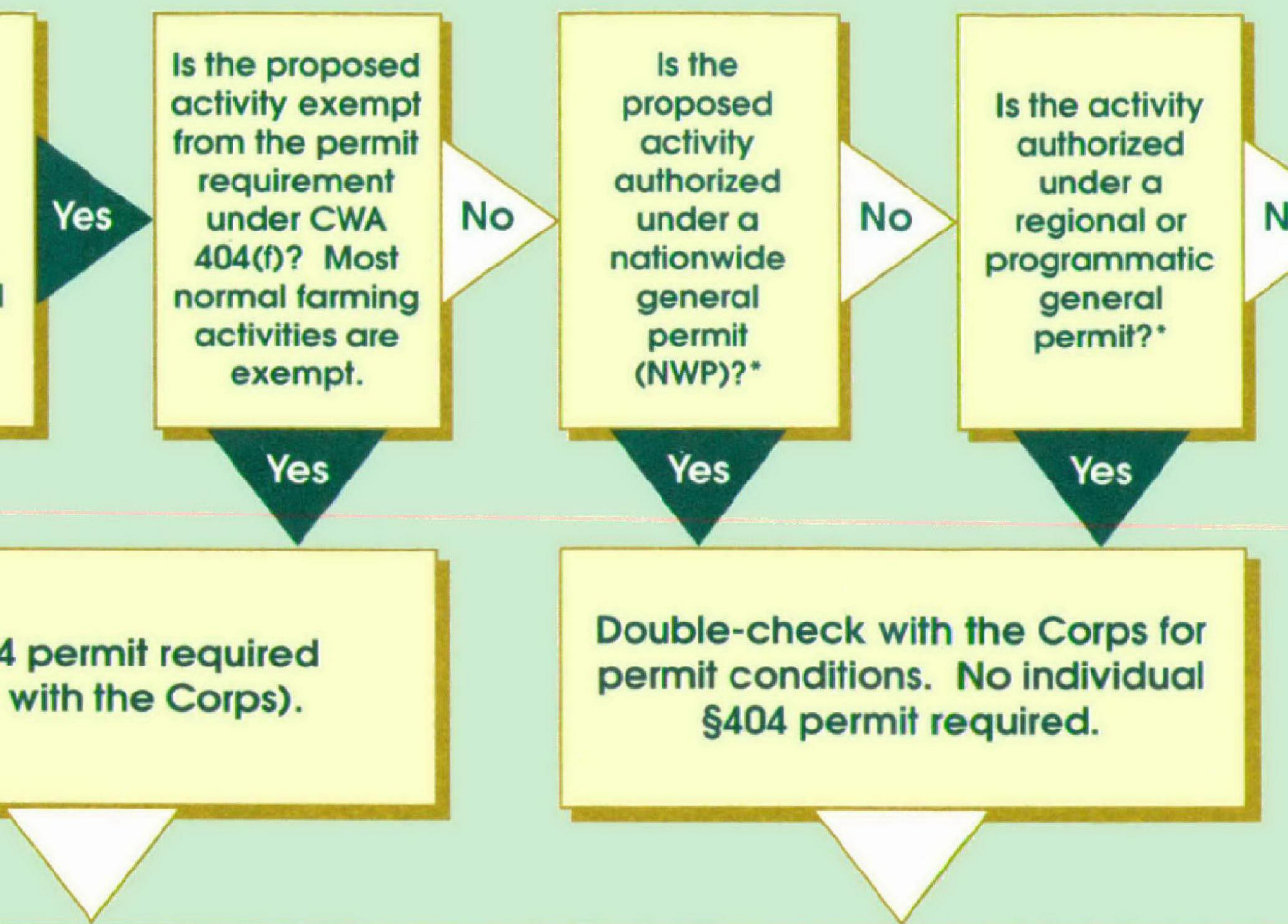
## Types of Section 404 Permits Issued by the Corps

\* General permits are issued to the public-at-large to authorize specific activities, such as bank stabilization activities or construction of farm buildings, that have minimal environmental impacts. A general permit can be issued on a state, regional, or nationwide basis. Activities authorized by a general permit require less review than an individual permit.

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**For phone numbers of your local Corps district**

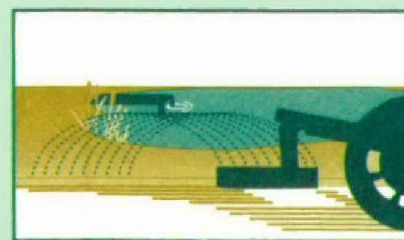
† Contact the Corps before undertaking these activities in wetlands



Land may be subject to Swampbuster.

Contact Soil Conservation Service.

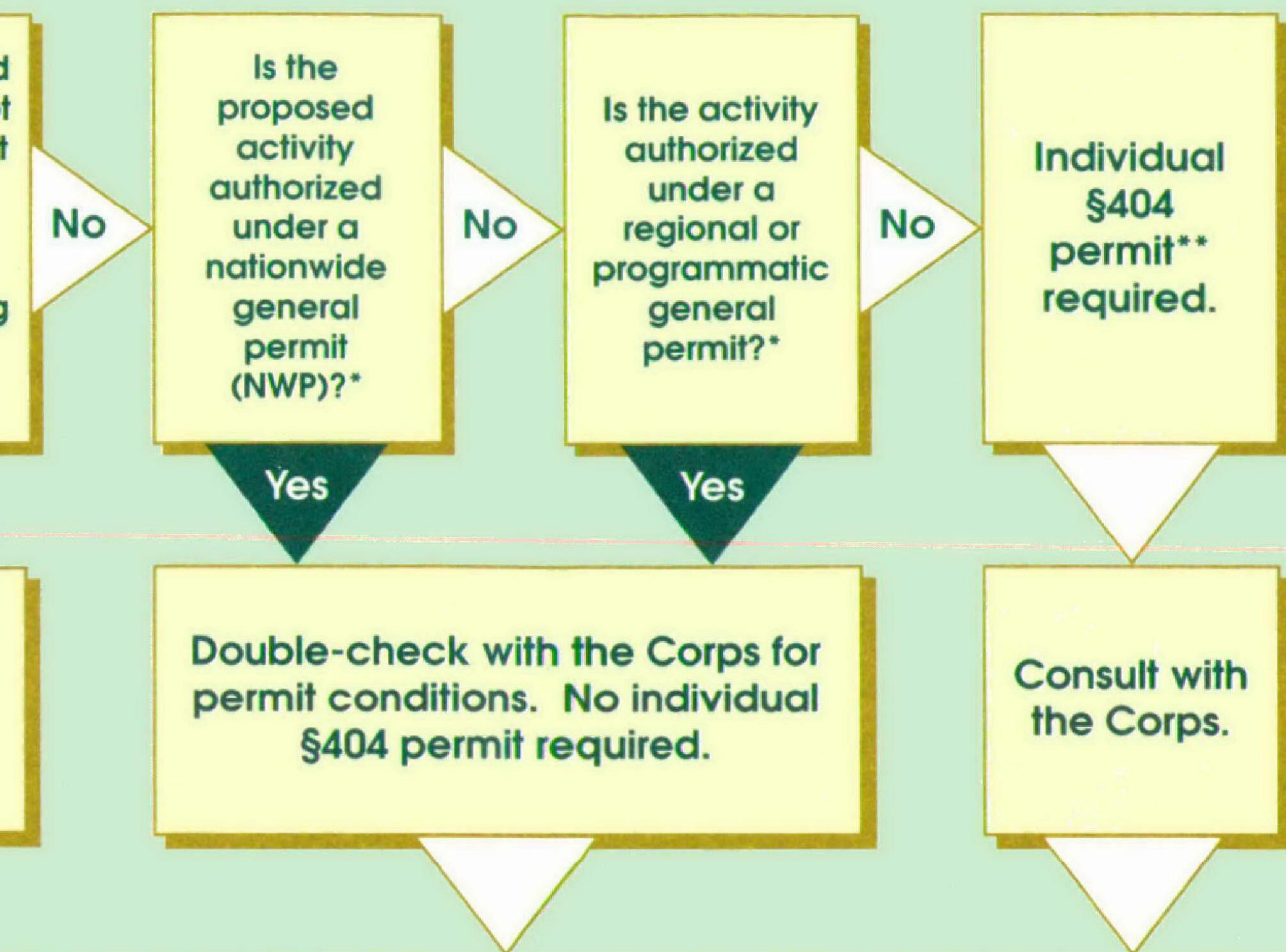
\*\* Individual permits are issued to any person (individuals, companies, etc.). Once a complete application is received by the Corps, a public notice is issued which describes the proposed project. The Corps evaluates all comments received and makes a final permit decision.



strict and Soil Conservation Service field office, call 1-8

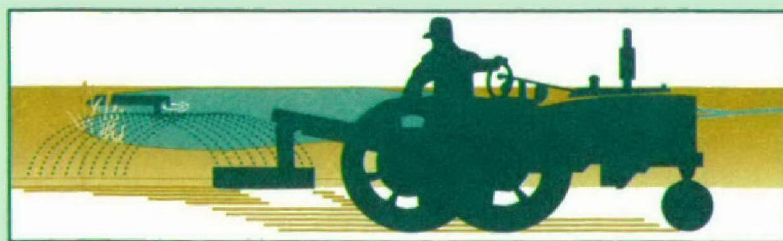
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Conservation Service field office, call 1-800-832-7828.

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conditions 1) 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, 2) This manipulation or conversion occurred before December 23, 1985, 3) The area has undergone generally extensive and relatively permanent modifications to its hydrology and vegetation, and 4) The area has not been abandoned 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

## **What happens if I don't farm my prior-converted croplands and wetlands conditions return?**

If a prior-converted cropland is abandoned for more than five years and wetland characteristics return, the cropland then is a wetland subject to regulation under Swampbuster and CWA Section 404

## **What are farmed wetlands?**

They are wetlands that have been manipulated, usually by drainage, and used for agricultural commodity production prior to December 23, 1985, but also are wet long enough to be wetlands subject to Swampbuster and CWA Section 404 Farmed wetlands include potholes and playas that are manipulated and planted with an agricultural commodity, but are ponded or flooded for 7 or more consecutive days or saturated to the surface for more than 14 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

## **How do I know if I have wetlands, prior-converted croplands, or farmed wetlands on my property?**

If you think you may have wetlands on your property subject to regulation under CWA Section 404, contact your local Corps district office for assistance To determine whether your area is a prior-converted cropland or a farmed wetland subject to Swampbuster, contact local Soil Conservation Service (SCS) office The SCS can also advise you on how to maintain these areas and still comply with Swampbuster

# Do You Have Questions About Wetlands Protection In Agricultural Areas?

**Call the EPA Wetlands  
Protection Hotline**

**1-800-832-7828**

Hotline hours: Monday-Friday, 9:00 am to 5:30 pm (EST)  
Hotline is contractor operated.

## **This confidential Hotline provides referrals and information on:**

- Federal wetland regulatory programs
  - Section 404 of the Clean Water Act
  - Swampbuster
- Status of Federal governmental actions
  - Regulations
  - Congressional legislation on wetlands
  - *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*
- Private and public wetlands protection programs
- Procedures for and contacts to obtain
  - National Wetlands Inventory Maps
  - Hydric soils list
  - List of plants that occur in wetlands



*U.S. Army Corps  
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