



FARMING AND RANCHING REGULATORY PROGRAM

U.S. Army Corps of Engineers
Sacramento District

BUILDING STRONG®

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Farmers and ranchers know their land best. The U.S. Army Corps of Engineers recognizes the importance of agriculture and wants to help you understand when a permit is – and isn't – needed for work on your property. We've seen more cases lately where people are unsure if a permit is needed before doing the work. This information paper provides some background about Section 404 of the Clean Water Act and breaks down when a permit may be needed so you can stay compliant and avoid headaches later.

Under the Regulatory Program, the Corps administers Section 404 of the Clean Water Act which regulates the discharge of dredged or fill material into waters of the United States. The Corps is also responsible for other laws, including Section 10 of the Rivers and Harbors Act of 1899 which covers work and structures in navigable waterways, like Lake Tahoe, the Sacramento River, Colorado River, and Bear River. This information paper only addresses activities under Section 404 of the Clean Water Act.

Waters of the United States (WOTUS) are navigable waterways, interstate waters (those crossing state lines), and impoundments of those waterways, and tributaries that are relatively permanent standing or continuously flowing bodies of water. WOTUS are also adjacent wetlands with a continuous surface connection to (i.e. abutting) another WOTUS. **What's not WOTUS?** Among other areas, intrastate waters that lack relatively permanent standing or flowing water, prior converted cropland as determined by the USDA NRCS, ditches excavated in and draining only dry land that do not carry a relatively permanent flow of water, swales and erosional features like gullies and small washes, irrigated areas that would revert to dry land, and lakes and ponds created on dry land for purposes like stock watering and irrigation.

Discharges of dredged or fill material refers to the addition of any material, like soil, sand or rock, into WOTUS. Discharges into WOTUS are often associated with road construction, utility line installation, and land development. If not specifically exempted under Section 404 of the Clean Water Act, discharges of material must be authorized by the Corps through a Department of the Army permit before work begins.

When is a permit **NOT** required from the Corps under Section 404 of the Clean Water Act for activities related to agriculture? There are two categories...

1. No permit is needed if the activity does not involve a discharge of material into WOTUS.

Let's look at the first part of this sentence... first. A permit is only required when an activity involves a discharge of material. Activities like excavating, clearing vegetation, or placing a bridge over a creek don't usually entail the addition of material into WOTUS. If the activity is not a discharge of material, no permit is needed and there's no reason to contact the Corps.

If the activity doesn't involve a discharge of material into WOTUS, you don't need a permit.

If the activity is done on dry land, you don't need a permit.

Now, the second part of the sentence... if the activity, regardless of what it is and how it's done, does not occur in an aquatic feature that could be a WOTUS, you don't need a permit. Most farming and ranching activities are, and have historically been, conducted on dry land. Dry land, sometimes referred to as "uplands", are areas that do not support any aquatic features. No need to contact the Corps if you are doing work only on dry land.

So, what if the activity I want to do involves a discharge of material into WOTUS?

2. No permit is needed if the activity is exempt under Section 404 of the Clean Water Act.

Certain activities involving a discharge of material into WOTUS, including many related to agriculture, are exempt from having to obtain a permit under Section 404 of the Clean Water Act. Exemptions cover activities associated with normal farming and ranching like plowing, seeding, cultivating, and harvesting, construction and maintenance of farm ponds, stock ponds and irrigation ditches, maintenance of drainage ditches, construction of temporary sedimentation basins, and construction or maintenance of farm roads. Important! Before conducting any work, read the exemption language carefully to understand what is covered.

Exemptions cover activities related to normal farming and ranching, construction and maintenance of farm ponds, stock ponds and irrigation ditches, maintenance of drainage ditches, and construction or maintenance of farm roads.

Note that any discharge of material into WOTUS incidental to an exempt activity which converts a WOTUS into a new use and where the flow or circulation of the WOTUS may be impaired or the reach reduced must be permitted by the Corps. For example, to maintain a drainage ditch (the exempt activity), a permit would be needed if the material is to be deposited in an adjacent wetland to create dry land (the incidental activity).

Need something in writing from the Corps regarding the jurisdiction of an aquatic feature?

If it's unclear whether an aquatic feature is a WOTUS and you need to discharge material into it, you can request a formal ("approved") determination of jurisdiction from the Corps. The Corps provides this service for its customers free of charge and only when requested. Most determinations are made within 90 days of receiving a request. If you disagree with the approved jurisdictional determination, it can be appealed administratively to higher Corps headquarters. There is NO requirement to obtain an approved jurisdictional determination from the Corps.

Need something in writing from the Corps to confirm you don't need a permit?

When requested, we can confirm in writing when no permit is required. This service, issuing a "no permit required" letter, does not cost anything. The Corps responds to most requests within 90 days. Under no circumstance does the Corps require someone to obtain such a letter. The [Regulatory Request System](#) provides an easy and quick way to receive confirmation that no permit is needed. Through the RRS, customers can also get more information about the Regulatory Program and make requests for jurisdictional determinations, pre-application meetings, and permits.



When a permit may be needed...

If you are proposing to conduct a farming or ranching activity that does not fit into one of the two categories discussed above, you should contact the Corps to determine next steps. We're available to discuss options. In many cases, there are other ways to achieve your desired outcome that don't involve having to get a permit from the Corps. In just about all other situations, the Corps has a general permit that can authorize the work.

Questions?

We're here to help before the work begins – it's faster and easier than fixing a problem later.

Email: SPKRegulatoryMailbox@usace.army.mil

Telephone: (916) 557-5250

Sacramento District Website: <https://www.spk.usace.army.mil>

Corps Regulatory Request System: <https://rrs.usace.army.mil>