



US ARMY CORPS OF ENGINEERS (USACE)

§ 404 Clean Water Act Permits

Exempt Activities

1. Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting.

Includes: plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

MUST be a part of an established (ongoing) farming, silviculture or ranching operation.

An operation is no longer established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrologic regime are necessary to resume operations.

For example, if a property has been used for cattle grazing, the exemption does not apply if future activities would involve planting crops for food; similarly, if the current use of a property is for growing corn, the exemption does not apply if future activities would involve conversion to an orchard or vineyards.

If the activity does not occur within waters of the U.S., or if it does not involve a discharge of fill material, the activity does not require a Department of the Army (DA) permit, whether or not it is part of an established farming, silviculture or ranching operation.

2. Maintenance Activities.

Includes: emergency reconstruction of recently damaged parts of currently serviceable structures.

Examples: dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures.

DOES NOT include any modification that changes the character, scope, or size of the original fill design.

Emergency reconstruction must occur within a reasonable period of time after damage occurs to qualify for the exemption.

If a maintenance activity would involve ANY modifications to the original fill design, including the location of the fill, the type of material to be used, the amount of material used, etc., then the activity DOES NOT qualify for the maintenance exemption, and a DA permit would be required. However, the activity may qualify for authorization under a Nationwide Permit 3, Maintenance.

3. Construction and maintenance of farm ponds, stock ponds or irrigation ditches or the maintenance of drainage ditches.

This exemption applies to the construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with facilities that are appurtenance and functionally related to irrigation ditches are included in the exemption (e.g. siphons, pumps, headgates, wingwalls, weirs, diversion structures, etc.).

Regulatory Guidance Letter (RGL 07-02) provides additional information regarding this exemption for the construction and maintenance of irrigation ditches and maintenance of drainage ditches, including definitions for irrigation ditches, drainage ditches, construction and maintenance.