
Wetlands and Agriculture:

Section 404 of the Clean Water Act

and

Swampbuster in the Food Security Act

What are wetlands?

Wetlands 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.

What are Agricultural lands?

Agricultural lands are intensively used and managed for the production of food or fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation. Areas that meet this definition may include intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops (e.g., cranberries, taro, watercress, rice). Agricultural lands do not include range lands, forest lands, wood lots, or tree farms.

What is the Swampbuster provision?

The Wetland Conservation provision (Swampbuster) of the 1985 and 1990 farm bills requires all agricultural producers to protect the wetlands on the farms they own or operate if they want to be eligible for USDA farm program benefits. Producers will not be eligible if they plant an agricultural commodity on a converted wetland that was converted by drainage, leveling, or any other means after December 23, 1985, or convert a wetland for the purpose of or to make agricultural commodity production possible after November 28, 1990.

What does Section 404 require?

Section 404 of the Clean Water Act (CWA) requires a landowner to obtain a permit from the U.S. Army Corps of Engineers (Corps) prior to beginning 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 are exempt and do not require a permit (see paragraph on exempt activities). In order to be exempt, the activities cannot be associated with bringing a wetland into agricultural production or converting an agricultural wetland to a non-wetland area.

How does the Swampbuster program relate to Section 404 of the CWA?

Generally, areas subject to regulation under Swampbuster and Section 404 of the CWA are the same, but there are differences. Some activities that are exempted under Swampbuster may require a Section 404 permit while some Section 404 permitted activities may be subject to Swampbuster. Before beginning any activity affecting a wetland, contact the [Seattle District Corps of Engineers](#) or the [Natural Resources Conservation Service \(NRCS\)](#).

What is prior converted cropland?

Prior converted croplands (PC) are wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to make production of an agricultural commodity possible, and that (1) do not meet specific hydrologic criteria, (2) have had an agricultural commodity planted or produced at least once prior to December 23, 1985, and (3) have not since been abandoned (see next paragraph). Activities occurring in prior converted cropland are not regulated under Swampbuster or Section 404 of the CWA.

What happens if I don't farm my prior converted cropland and wetland conditions return?

If a prior converted cropland is not planted to an agricultural commodity for more than five consecutive years and wetland characteristics return, the cropland is considered abandoned and then becomes a wetland subject to regulation under Swampbuster and CWA Section 404.

What are farmed wetlands?

Farmed wetlands (FW) are similar to prior converted cropland in that they were drained, dredged, filled, leveled, or otherwise manipulated before December 23, 1985, to make production of an agricultural commodity possible, but are often wet enough to still be valuable wetland habitat subject to Swampbuster and Section 404 of the Clean Water Act. Farmed wetlands include potholes, playas, pocosins, and other manipulated and cropped areas that meet specific hydrologic criteria.

Farming Activities that are Exempt from Section 404.

Contact the Corps before undertaking these activities in wetlands and other waters of the United States to verify applicability of the exemptions.

- 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.

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

To be sure about the status of wetlands on your farm, contact your local [NRCS](#) office. NRCS is the lead Federal agency responsible for wetland delineations on agricultural land for *both* Swampbuster and Section 404 of the CWA. NRCS conservationists can also advise you on how to comply with Swampbuster. The Corps is the lead Federal agency responsible for wetland delineations on *non*-agricultural land for anyone who does not participate in USDA programs.

Questions to Answer *Before* Starting a New Activity

Are you a USDA program participant?

USDA program participants are required to document their intent to manipulate wet areas on Form AD-1026 at the local USDA Consolidated Farm Service Agency office.



YES

Do you have a "certified wetland determination"?



NO

Is the activity you plan on agricultural land?



YES



NO



YES



NO

Contact the Corps of Engineers for a wetland delineation.



Contact NRCS for a wetland delineation.



Is the area prior converted cropland (PC) or non-wetland (NW)?



YES

No 404 permit required

Verify that the planned activity will maintain your USDA program eligibility.



NO

Is the activity exempt from the permit requirement under CWA 404(f)?



YES

No 404 permit required.

Verify with the Corps of Engineers. Consult with NRCS to assure compliance with Swampbuster.



NO

Section 404 permit required.

Consult with the Corps of Engineers as to whether a general or individual permit applies. Consult with NRCS to assure compliance with Swampbuster.