

Pesticides: Wetlands

5-Minute Talk

Overview of topic

Section 404 of the Clean Water Act establishes a program which requires a Federal permit to discharge dredged or fill materials into waters of the United States, including wetlands. Wetlands are areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, estuaries, and other inland and coastal areas. Fill material is any material which changes the bottom elevation of a water body for any purpose.

Activities regulated under the Section 404 program include:

- Placement of fill that is necessary for the construction of any structure in a water of the United States.
- The building of any structure or impoundment requiring rock, sand, dirt or other material for its construction.
- Site-development fills for recreational, industrial, commercial, residential, and other uses.

The Army Corps of Engineers (Corps) and EPA, who jointly administer the program, issue permits for these activities after evaluating the application for a variety of criteria including the impacts on fish and wildlife, the duration and extent of the proposed action, the effect on water quality, and the availability of alternative measures.

Permits

Regulated activities are controlled by a permit review process. The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. When you apply for a permit, you must show that you have:

- Taken steps to avoid wetland impacts where practicable.
- Minimized potential impacts to wetlands.
- Provided compensation for any remaining, unavoidable impacts through activities to restore or create wetlands.



General permits—For most discharges that will have only minimal adverse effects, the Corps often grants up-front general permits. These may be issued on a nationwide, regional, or state basis for particular categories of activities (for example, minor road crossings, utility line backfill, and bedding) as a means to expedite the permitting process. A general permit can be granted if the activities in a category: (1) are similar in nature and similar in their impact upon water quality and aquatic environment, (2) will have only minimal adverse effects when performed separately, and (3) will have only minimal cumulative adverse effects on water quality and the aquatic environment.

Individual permits—An individual permit is usually required for potentially significant impacts. The 404 individual permit process includes the following steps: (1) public notice (describing the proposed activity, its location, and potential environmental impacts) is issued by the Corps, (2) a 15-30 day comment period is held, (3) citizens may request a public hearing, (4) the Corps conducts a permit evaluation, and (5) an Environmental Assessment and Statement of Finding, which explains how the permit decision was made, is made available to the public.

Denying a disposal site

EPA is authorized to prohibit or otherwise restrict a site whenever they determine that the discharge of dredged or fill material is having or will have an “unacceptable adverse effect” on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. In making this determination, EPA will take into account all information available and will consult with the Corps or with the state.

Regulations establishing procedures to be followed by the EPA in denying or restricting a disposal site appear at 40 CFR Part 231. The process includes the administrator’s proposed determination, public notice of the proposed determination, 30-60 day comment period, a possible public hearing, new recommended determination (with possible corrective actions) or withdrawal of proposed determination, and final determination.

Agency responsibilities

The Army Corps of Engineers:

- Administers the day-to-day program, including individual permit decisions and jurisdictional determinations.
- Develops policy and guidance.
- Enforces Section 404 provisions.



The Environmental Protection Agency:

- Develops and interprets environmental criteria used in evaluating permit applications (40 CFR Part 230).
- Determines scope of geographic jurisdiction.
- Approves and oversees State assumption.
- Identifies activities that are exempt.
- Reviews/comments on individual permit applications.
- Has authority to veto the Corps' permit decisions.
- Can elevate specific cases.
- Enforces Section 404 provisions.

Employee training

There are no training requirements for construction employees, this 5-Minute Talk is an awareness tool.

Training tips

Make employees aware of the company's efforts to meet environmental requirements.

Where to go for more information

Clean Water Act—Section 404

