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# Questions and Answers Related to Corps of Engineers New Regulation Covering Section 404, PL 92-500

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•QUESTION: Why is the Corps of Engineers revising its regulation that covers Section 404 of PL 92-500, the 1972 Amendments of the Federal Water Pollution Control Act?

ANSWER: These revisions are being made as the result of an order from the U.S. District Court for the District of Columbia which directed the Corps of Engineers to expand the regulation to include the "waters of the United States." The Court first directed that the new regulation be published by June 16, 1975, within 40 days of the Court decision of March 27, 1975. The Court later granted an additional 40 days for review and coordination of comments by the public, as well as state and federal agencies and other interested groups. The interim final regulation was published July 25, 1975, and became effective on that date. An additional 90-day comment period was provided to refine the regulation further and to make any necessary changes.

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•QUESTION: Who will be responsible for determining where a stream's headwaters begins? In other words, who will measure the five cubic feet per second flow?

ANSWER: The District Engineer will have this responsibility. He will not actually measure the flow of each and every stream in his district. He will, however, utilize hydrologic and stream data information that might be found in published reports from other federal or state agencies, as well as from recognized private educational and commercial research institutions.

ANSWER: Yes. The individual District Engineer will retain responsibility for determining what permit application will or will not require an EIS.

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●QUESTION: Will the Corps of Engineers consider easing its restrictions on construction of logging roads in order to speed up logging operations and reduce costs?

ANSWER: Filling activities for logging roads, if conducted within navigable waters as now defined, may actually be minor in nature and have a minimum impact on water quality. If they are minor in nature, they could fit into the Corps' concept of a general permit activity and be covered accordingly. As the Corps develops the general permit concept more, other types of such activities could be included without adversely affecting water quality.

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●QUESTION: Will river bottom land or flood plains be considered within the "waters of the United States" and subject to Section 404 permit authority of the Corps of Engineers?

ANSWER: To the extent they are considered coastal or freshwater wetlands, under the Corps definition. This means the river bottom land or flood plain would have to be inundated periodically and have a prevalence of vegetation that requires saturated soil conditions for growth and reproduction.

●QUESTION: Will this regulation cover rice farming?

ANSWER: It will cover certain rice farming operations, if the discharge of dredged or fill material is involved.

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●QUESTION: What type of agricultural operations, if any, will require a Corps of Engineers 404 permit?

ANSWER: Normal agricultural operations such as plowing, seeding, harvesting and cultivation will continue to be exempt from Section 404 permit requests. In addition, conservation practices such as terracing, check dams, and land leveling which do not occur in waters of the United States will not require permits. However, some work undertaken by a farmer, such as the damming of a major stream, or the diking, dredging, or filling of a wetland might require a permit.

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●QUESTION: Will farm irrigation ditches be considered "waters of the United States" and subject to Section 404 permit authority of the Corps of Engineers?

ANSWER: Generally no. But permits will be required for the excavation of the ditches if they are to be located in coastal or freshwater wetlands or other waters of the United States.

●QUESTION: What force will the EPA guidelines have on Corps of Engineers decisions covering Section 404 permits?

ANSWER: The EPA guidelines, to a large part, will dictate whether or not the Corps issues a permit under Section 404. As an example, the Corps is required to use the EPA guidelines in selecting disposal sites for dredged material. If EPA disagrees with the Corps' selection of a disposal site, it can deny use of the site or force the Corps to modify the use of the site.

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●QUESTION: Where does the Corps of Engineers' Section 404 permit authority now extend as a result of the just published expanded regulation?

ANSWER: The Corps' Section 404 authority presently extends to all coastal and inland navigable waters and contiguous or adjacent coastal and freshwater wetlands, as well as tributaries of navigable waters up to their headwaters. Freshwater wetlands and coastal wetlands are those areas which are periodically inundated and that are normally characterized by the prevalence of vegetation that requires salt or brackish water or saturated soil conditions for growth and reproduction.

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6 ●QUESTION: Is the Corps of Engineers planning to transfer administration of some portions of Section 404 regulation to the states?

ANSWER: No. The Section 404 permit program is exclusively a federal program and the Corps of Engineers does not have authority to delegate portions of it to the states. However, provision has been made in the regulation for the joint processing of Corps and state permits in those states which have similar permit programs.

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●QUESTION: After July 25, when the interim final regulation went into effect, was there any further opportunity for the American people to submit comments?

ANSWER: Yes. An additional 90-day comment period was provided to refine the regulation further and to make any necessary changes.

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●QUESTION: Where can the average citizen get information on whether or not he may need a permit?

ANSWER: This information is available from the District Engineer office responsible for permits in that area.

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●QUESTION: What does a Section 404 permit cost, and how long does it take to process a permit once an individual has applied?

ANSWER: A fee of \$10 is charged for processing of an application for discharge of less than 2,500 CY of fill material. For the discharge of over 2,500 CY of fill material, the fee is \$100. It takes an average of three months for the Corps of Engineers to process a Section 404 permit. However, this is still a new program and if it grows rapidly without an increase in personnel and funds, then the processing time could soon take more than three months.

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●QUESTION: Does normal ranching and silviculture operations include the construction of dikes for the purpose of draining or protecting areas to increase farm acreage?

ANSWER: No. New dikes will require a permit. Maintenance of authorized dikes, levees, etc., will not require a permit.

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