



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: October 1, 2009

All interested parties are hereby notified that the Wilmington District, Corps of Engineers (Corps) is issuing a Public Notice to announce the issuance of the document *Suggested Steps for Agricultural Pond Evaluation & Approval to Build*. The purpose of this document is to provide guidance to property owners seeking written concurrence from the Corps that their proposed construction or maintenance of farm or stock ponds or irrigation ditches is exempt from Department of the Army (DA) permitting requirements pursuant to 33 CFR, Part 323.4 (a)(3). While we recognize that written concurrence from the Corps for exemptions is not required, this document provides not only the guidance on how to proceed with exemption request from the various federal and state agencies, it also outlines the information that would expedite such a request, should written concurrence from the Corps be sought. This protocol was developed jointly between various federal, state and private agencies. Federal participants included the Corps and two groups within the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA). Several state agencies involved were The North Carolina Department of Environment and Natural Resources, Division of Water Quality (DWQ), Division of Soil and Water (?), and the Division of Land Resources (?). The North Carolina Department of Agriculture and Consumer Services and North Carolina Extension Service participated. Representatives from the North Carolina Farm Bureau Federation and the North Carolina State Grange represented private organizations that participated in the development of this document. This document can be found on our Regulatory website at <http://www.saw.usace.army.mil/wetlands>. Hard copies may be obtained by contacting any of the four Regulatory field offices located within North Carolina. There is no comment period associated with the issuance of this document.

Suggested Steps for Agricultural Pond Evaluation & Approval to Build
Revised July 16, 2009

1. Contact your local USDA-NRCS or County Soil & Water office to complete a "Preliminary Site Assessment for New Ponds"
2. Review the potential alternatives for your agricultural water needs.
3. Review potential regulatory requirements. US Army Corps of Engineers Farm Pond or other Irrigation Exemption Request should be completed and placed in the file unless requesting a Department of Army permit. Note: exemptions will only be granted when the size of the pond does not exceed agricultural water needs.
4. Consult with your local USDA-NRCS or County Soil & Water office to determine if technical and / or financial assistance is available.
5. After consultation with your local USDA-NRCS or County Soil & Water office, have a preliminary pond layout developed. Preliminary layout may be either from a local grading company who may be used to build the pond or from a professional civil, agricultural, or environmental engineer. Owner may contact the NC Division of Land Resources to determine dam permit requirements.
6. If the building site of the pond is on a USDA-FSA Farm Serial Number review and sign a "Confidentiality Agreement" that will allow USDA-NRCS to discuss your potential pond site with various federal and state agencies. After signing the "Confidentiality Agreement", consult with USDA-NRCS to determine if the Swampbuster "WX" exemption applies. Following that determination, the USDA-NRCS can provide guidance to whether you need to contact the Army Corps of Engineers, NC Division of Land Resources-Dam Safety Program and/ or North Carolina Division of Water Quality for regulatory requirements.
7. If the proposed pond site does not have a USDA-FSA Farm Serial Number, the landowner should take a copy of the "Preliminary Site Assessment for New Ponds" and a preliminary pond layout to the appropriate Army Corps of Engineers office, NC Division of Land Resources-Dam Safety Program and North Carolina Division of Water Quality for a preliminary assessment of regulatory requirements.
8. Begin the pond construction only after determining and securing the required permits or exemptions based upon completion of the above recommended steps.

I, _____, am the current owner of the property located at:

I wish to pursue confirmation from the United States Army Corps of Engineers (Corps) that the activity I propose is exempt from Department of the Army (DA) permitting subject to Section 404 of the Clean Water Act, 33 CFR, Part 323.4(3) which states that construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

Furthermore, I understand that "in order to qualify for the exemption, a low flow orifice must be installed on the principal spillway pipe in order to maintain downstream flow during the filling of the pond and during dry weather conditions. Downstream flow must be maintained at all times. In addition, if the land use surrounding the pond changes from agricultural use to a non-agricultural use including but not limited to a commercial or residential development, the pond will no longer be exempt and a DA individual permit will be required, if the jurisdictional impacts to waters of the United States exceeds either 0.5 acre of wetlands or 300 linear feet of stream channel subject to our regulatory authority pursuant to Section 404 of the Clean Water Act." Should the impacts be less than those mentioned above, then the project might qualify for DA nationwide permitting.

Signature _____

Printed Name _____

Address (if different from above) _____

Home Telephone Number _____

Mobile Telephone Number _____

PRELIMINARY SITE ASSESSMENT FOR NEW PONDS

Revised April 27, 2009

Note: This preliminary assessment does NOT constitute a formal soil or geologic investigation or a pond design, and should not be used for construction. The information on this form represents a preliminary site assessment to evaluate the feasibility of a potential pond site, and assist in determining the priority for engaging engineering services for a more thorough site investigation and design.

INFORMATION

Client Name: _____ Tract/Field: _____

Address: _____ County: _____

Purpose of Pond: Irrigation Livestock Water What is the river basin? _____

SITE CHARACTERISTICS *All values are estimated and best opinion values. Detailed field surveys and site investigations are not a part of this assessment.*

Estimated drainage area: _____ acres

Estimated pool area: _____ acres

Estimated depth of water: _____ feet

Estimated embankment height: _____ feet

Estimated length of dam: _____ feet

Estimated hazard class (if known) _____

List soil map units in the area that are suitable for:

core trench _____

embankment _____

Is site's topography generally suitable for an embankment or excavated pond, including an emergency spillway? _____ (Y/N) *If No, explain in Notes Section.*

Do the physical characteristics of the site appear suited for development of a pond that can address the purpose indicated above and satisfy the program requirements? _____ (Y/N) *If No, explain in Notes Section.*

Are there any known geologic or soil features that may restrict ability of pond to hold water, or require special design or construction? _____ (Y/N) *If Yes, explain in Notes Section.*

Complete for Irrigation Pond

Acres to be irrigated _____ acres

Crops to be irrigated

Irrigation method

- Yes No Land irrigated from this pond has been irrigated during 3 out of the last 5 years.
- Yes No Permanent ungrazed filter strip established around the pool.
- Yes No All sources of sediment in the vicinity will be stabilized with vegetation.
- Yes No Livestock will be fenced out of pool, dam, and spillway.

Complete for Livestock Water Ponds

- Yes No Permanent filter strip established around the pool.
- Yes No All sources of sediment in the vicinity will be stabilized with vegetation.
- Yes No Livestock will be fenced out of pool, dam, and spillway.
- Yes No Water is to be used for livestock production. If yes complete below.

Type of livestock	No. of livestock	Is to livestock confined – yes or no?

Endangered or Threatened Species

A review of authoritative records has been completed and indicates this project is likely to have the following category of effects on federal or state listed Endangered and Threatened species:

Notes: _____

- No T/E species or Critical Habitat known to occur in or around the proposed pond area, therefore the pond will have no effect on a T/E spp. or Critical Habitat.
- T/E species or Critical Habitat do occur in or around the proposed pond area, however the pond will have no effect on the T/E spp. or Critical Habitat.
- T/E species or Critical Habitat do occur in or around the proposed pond area. However pond design alternatives may provide beneficial, insignificant, or discountable effect to the T/E species or Critical Habitat.
- T/E species or Critical Habitat do occur in or around the proposed pond area. Pond development may cause adverse effect to the T/E species or Critical Habitat.

Estimated extent of wetlands and streams

Including isolated wetlands that may be exempt from the CWA, what is the estimated acreage of wetlands that will be permanently inundated by pond water or covered by the embankment/spillway?

_____ Acres

Approximately how many linear feet of stream will be permanently inundated by pond water and/or filled by the embankment/spillway?

_____ feet of stream inundated _____ feet of stream filled by embankment/spillway

The attached information sheet on ponds and permitting issues has been discussed with the participant. The participant has been informed that obtaining permits is the responsibility of the landowner/participant.

- Yes No

CONCLUSIONS

The information collected in this preliminary investigation applies only to the site identified on the attached location map.

Based on the preliminary assessment, I recommend this potential pond site for further site investigation and design.

- Yes No

Notes:

Representative: _____ Agency: _____ Date: _____

Attach Map Indicating Site Location

FACT SHEET: Planning & Permitting Requirements Associated with Pond Construction

- It is the landowner/participant's responsibility to comply with all federal, state, and local laws and permit requirements.

USDA Wetlands Conservation (WC) Provisions of the FSA of 1985:

- All USDA program participants are encouraged to file an AD-1026 with the Farm Service Agency. Manipulation of wetlands in order to develop a pond embankment, spillway, or pool area is not a violation of Wetlands Compliance provisions of the Food Security Act, as this wetland manipulation does not make the production of a commodity crop possible. NRCS wetland determination on these areas would likely be labeled "WX", which would not result in non-compliance.
- If other potential wetland areas will be manipulated as part of the pond construction where production of a commodity crop would be possible (even if there are no plans to plant a commodity crop), then compliance with the Food Security Act could be affected.

Federal and State Wetland & Stream Regulatory Programs:

- The Federal Water Pollution Control Act, more commonly known as the "Clean Water Act," under *Section 404*, directs the U.S. Army Corps of Engineers to issue permits for the discharge of dredged or fill material into waters or wetlands of the U.S. This law has a direct impact on the development of ponds on non-isolated waters or wetlands considered under the jurisdiction of this law. Pond construction for irrigation and livestock water can sometimes be exempt from the U.S. Army Corps for Engineers regulatory program and the NC Division of Water Quality's wetlands protection rules; however, there are also circumstances when permits may be required to construct farm ponds. Determining which areas qualify for protection is a Corps responsibility. For more information: <http://www.saw.usace.army.mil/WETLANDS/index.html>
- Participants should keep in mind that the wetland determination and jurisdiction of the Clean Water Act does not affect any determination made for the Wetlands Compliance provisions of the Food Security Act of 1985.
- If the U.S. Army Corps of Engineers (the Corps) determines that a 404 Permit or Section 10 Permit is required because the proposed project involves impacts to wetlands or waters, then a 401 Water Quality Certification is also required. When the state issues a 401 Certification, this certifies that a given project will not degrade Waters of the State or otherwise violate water quality standards. For more information: <http://h2o.enr.state.nc.us/ncwetlands/>
- An Isolated Wetlands Permit may be needed when the Corps determines that a wetland to be potentially impacted is not 404 jurisdictional. Isolated Wetlands Permits are issued by the Division of Water Quality, and is not a 401 Certification. The application process is similar to applying for a 401 Certification. For more information: <http://h2o.enr.state.nc.us/ncwetlands/>
- In NC, some waters in western counties have trout designations. Certain activities on these waters, depending upon the stream designation and time of year, may be restricted in order to protect this valuable resource. If you are in a "trout" county, check with the COE representative to see if additional restrictions apply. <http://www.saw.usace.army.mil/WETLANDS/where/imap2/index.html>
- If the proposed pond will disturb more than one acre, a Sediment and Erosion Control Permit may be required from the N.C. Division of Land Resources. Some agricultural activities are considered exempt. For more information: http://www.dlr.enr.state.nc.us/pages/sedimentation_new.html
- Depending upon factors such as dam height, drainage area, downstream land use, and other factors, a permit from the Dam Safety Section of the Division of Land Resources could be required. For more information: <http://www.dlr.enr.state.nc.us/pages/damsafetyprogram.html>
- Other state or local ordinances could apply to some sites. Rules or guidance associated with the Coastal Area Management Act, NC River Basin rules, or other regulatory programs should be considered. For more information: <http://www.enr.state.nc.us/>