

Department of the Army (DA) Permitting Options for Farm Pond Construction

In the event that a proposed discharge doesn't qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR Part 323.4) or falls below the thresholds which would require the submittal of a DA standard permit (Individual) application, then the applicant may wish to pursue permitting options through one of the following general permit options (Nationwide Permit):

Nationwide Permit (NWP) 40 - Agricultural Activities-Authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

This permit authorizes the discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (See general condition 27.)

Nationwide Permit 18 - Minor Discharges – Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the

volume of area excavated exceeds 10 cubic yards below the plane of ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.)

Nationwide Permit 29 – Residential Developments - Discharges of dredged or fill material into non-tidal waters of the United States for the construction of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of the United States authorized by this NWP cannot exceed ½ acre. This includes any loss of waters of the United States associated with the development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)

NOTE: While verification of these permits may be available for pond construction proposals, the applicant needs to be advised that there are various general, regional and state conditions that may either eliminate or modify the applicability of the possible options mentioned above. Therefore, the best advice is for a potential applicant to contact their local Regulatory Specialist or Project Manager to determine the appropriate DA permitting option for their proposal.