

**ENVIRONMENTAL PROTECTION AGENCY**

**DEPARTMENT OF DEFENSE**

**DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS**

**[EPA-HQ-OW-2013-0820]**

**Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices**

**AGENCIES:** Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps), Department of the Army, Department of Defense.

**ACTION:** Notice of Availability and Public Comment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are announcing the availability of an interpretive rule to address the exemption from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA) for discharges of dredged or fill material associated with certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality. While the interpretive rule is effective upon issuance, the agencies recognize the importance and value of

receiving public input on the implementation of this interpretive rule and welcome comments in response to this notice within the next 45 days.

**DATES:** This interpretive rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The interpretive rule, as well as a list of NRCS practices that meet the exemption, are available via the Internet on the EPA website:

<http://water.epa.gov/lawsregs/guidance/wetlands/agriculture.cfm>. EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2013-0820. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone number for the Water Docket is 202-566-2426.

**FOR FURTHER INFORMATION CONTACT:** Ms. Damaris Christensen, Office of Water (4502-T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number 202-564-2442; e-mail address: [Wetlands-HQ@epa.gov](mailto:Wetlands-HQ@epa.gov) or Mr. Chip Smith, Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Washington, DC 22310; telephone number 703-697-4672;

[USACE\\_CWA\\_RULE@usace.army.mil](mailto:USACE_CWA_RULE@usace.army.mil) or Ms. Stacey Jensen, Regulatory Community of Practice

(CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street, NW, Washington, DC 20314; telephone number 202-761-5856; email address: [USACE\\_CWA\\_RULE@usace.army.mil](mailto:USACE_CWA_RULE@usace.army.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Information about the Document**

Section 404(f)(1)(A) of the CWA exempts from section 404 permit requirements certain discharges associated with normal farming, silviculture, and ranching activities in “waters of the United States,” including wetlands. To provide additional clarity to farmers and to promote practices under the Agriculture Act of 2014 designed to improve water quality, the EPA and the Corps have signed an interpretive rule, “Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices.” This interpretive rule clarifies the applicability of the permitting exemption provided under section 404(f)(1)(A) of the CWA to discharges of dredged or fill material associated with certain agricultural conservation practices. These Natural Resources Conservation Service (NRCS) conservation practices are designed and implemented to protect and enhance water quality. To qualify for this exemption, the activities must be part of an “established (i.e., ongoing) farming, silviculture, or ranching operation,” consistent with the statute and regulations. The activities must also be implemented in conformance with NRCS technical standards. This interpretive rule was developed in coordination with the U.S. Department of Agriculture and is effective immediately.

USDA and NRCS’s natural resources conservation programs help people reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce



damages caused by floods and other natural disasters. These longstanding USDA programs are effective in promoting the water quality and broader environmental goals identified in both the Agriculture Act of 2014 and Clean Water Act. The agencies believe working together to improve the consistency and integration of programs like these is fully consistent with the law, promotes the mutual objectives of our regulations and statutes, and increases clarity and predictability for the agriculture community. The result is good for the nation's waters and for farmers and foresters who want to protect the resources on their lands.

The agencies have identified specific NRCS agricultural conservation practices that are appropriately considered "normal farming" activities and exempt from permitting under section 404(f)(1)(A). The agencies and NRCS have also entered into a Memorandum of Understanding to guide their future coordination on the exemption. The list of practices, the Memorandum of Understanding, and the interpretive rule are available on the EPA website at <http://water.epa.gov/lawsregs/guidance/wetlands/agriculture.cfm> and in the docket for this notice. The agencies seek comment on these documents within the next 45 days. The agencies and NRCS intend to periodically revisit and revise, if necessary, the list of exempt NRCS conservation practice standards. The agencies are particularly interested in receiving comments on how they might most effectively and efficiently conduct this periodic review and how best to revise the list of exempt NRCS practice standards. The agencies also request comment on how they can best work together and with NRCS to provide clarity to the regulated community and the public on the exemption.

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Dated:

Dated:



**MAR 25 2014**

Nancy K. Stoner,

Acting Assistant Administrator for Water,

Environmental Protection Agency.



**MAR 25 2014**

Jo-Ellen Darcy,

Assistant Secretary of the Army

(Civil Works),

Department of the Army.