

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.

PRELIMINARY SITE ASSESSMENT FOR NEW PONDS

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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: _____

Mailing Address: _____ County of Pond Site: _____

Is the Pond Site located on a tract of land with a conservation easement? yes no

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

Hazard classification (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 _____

Complete for Livestock Water Ponds

Yes No Water is to be used for livestock production. If yes complete below.

Type of livestock	No. of livestock	Type of production operation

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

May Include Isolated Waters _____ Yes or _____ No

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

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 – Swampbuster:

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, Buffer and Dam Safety 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 (the Corps) 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 Corps regulatory program and the NC Division of Water Quality's (DWQ) 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 be aware that the wetland determination and jurisdiction of the Clean Water Act is not the same as any determination made by USDA for the Wetlands Compliance provisions of the Farm Bill.

If the Corps determines that a 404 Permit or Section 10 Permit is required, then a 401 Water Quality Certification is also required from the DWQ. 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/hcwetlands/>

A buffer authorization may be required if your property occurs in a regulated buffer basin. If a new or expanded pond occurs on a buffered stream, restoration of the buffer may be required. Every site has unique conditions. Contact Central or appropriate Regional Office staff at DWQ with direct questions about your project to discuss applicability and implications of the buffer rules. These contacts and other information about the Buffer Rules are posted at: http://h2o.enr.state.nc.us/hcwetlands/RiparianBufferRules.htm#buffer_rules.

An Isolated Wetlands Permit may be needed from DWQ when the Corps determines that a wetland to be potentially impacted is not 404 jurisdictional. An Isolated Wetlands Permit 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/hcwetlands/>

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 Corps representative to see if additional restrictions apply. <http://www.saw.usace.army.mil/WETLANDS/where/map2/index.html>

If the proposed pond will disturb more than one acre, a Sediment and Erosion Control Permit may be required from the NC Division of Land Resources (DLR). 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 DLR Dam Safety Program 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/>

US Army Corps of Engineers Farm Pond/Irrigation Exemption Request

I, _____, am the current owner of the following 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, 33CFR, Part 323.4 (3). This regulation states that construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches may be exempt from DA permitting requirements. 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 may be required to be installed on the principal spillway pipe in order to maintain downstream flow during the filling of the pond and during dry weather conditions. Normal downstream flow must be maintained at all times. Compliance with this provision shall be determined by the Corps on a case-by-case basis.

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 and/or 300 linear feet of stream channel subject to 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 _____

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.

Asheville Field

Office
(828) 271-7980, Ext.
228

Alexander	Caldwell	Haywood	Madison	Swain
Alleghany	Catawba	Henderson	Mecklenburg	Transylvania
Ash	Cherokee	Iredell	Mitchell	Union
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Raleigh Field

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28**

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