

Two Years of Progress

Meeting Our Commitment For Wetlands Reform

Protecting America's Wetlands: A Fair, Flexible and Effective Approach August 1993 - August 1995

Shortly after coming into office, the Clinton Administration convened an interagency group to address legitimate concerns with Federal wetlands policy. After hearing from States, developers, farmers, environmental interests, members of Congress, and scientists, the group completed a 40-point plan identifying actions to enhance wetlands protection while making wetlands regulation more fair and flexible.

The Administration Wetlands Plan was issued in August 1993. In the two years since it was developed, many proposals from the plan have been implemented -- streamlining the wetlands permitting program, responding to the concerns of farmers and small landowners, improving cooperation with private landowners to protect and restore wetlands, and increasing the role of State, local, and Tribal governments in wetlands protection. While our work is not completed, our efforts to date demonstrate that the Clinton Administration is meeting its commitment for meaningful wetlands reform.

ACTIONS TAKEN TO INCREASE FLEXIBILITY AND ENSURE FAIRNESS

Exempt Prior Converted Cropland

To make the Federal wetlands program more consistent and predictable for farmers, the Clinton Administration clarified that "prior converted croplands" are not subject to regulation under Section 404 of the Clean Water Act. Nearly 53 million acres of farm land are covered by this action which exempted lands that no longer perform the wetlands functions as they did in their natural condition. Prior converted croplands are wetlands which were converted to agriculture prior to the passage of the Food Security Act of 1985, which established the Swampbuster program.

Establish Appeals for Landowners

The Clinton Administration also proposed an appeals process allowing landowners to appeal wetlands identifications and permit denials, without costly and time-consuming court battles. Once regulations are in place, landowners can have their wetlands determinations or permit denials reviewed by officials at higher levels in the agencies thereby avoiding the expense and delay of formal litigation.

Increase Certainty and Flexibility for Identifying Wetlands

For those farmers with wetlands on their property, the Clinton Administration has simplified wetlands identifications and increased certainty for permit applicants. Farmers

can now rely on a single wetlands determination by USDA on farm lands for both Food Security Act and Clean Water Act programs. This action reduces duplication and increases consistency across the two programs.

In addition, in 1995, the Clinton Administration took action to provide additional certainty and flexibility to applicants. The Administration has prepared to increase its reliance on State and private wetlands identifications through a certification program for most States. This enables landowners to rely on a single wetlands determination for both Federal and State programs.

General Approval for Homeowners Nationwide

In 1995, an approval process was set up that allows landowners to affect up to one-half acre of non-tidal wetlands for construction of single-family homes without applying for an individual Section 404 permit. This action eliminates unnecessary burden for families trying to build or add on to an existing home in wetlands on their property. The general permit also covers common features such as garages, driveways, storage sheds, yards, and septic tanks. This new general permit joins hundreds of others under which tens of thousands of activities in wetlands with minor impacts are rapidly processed each year, without an individual application and often without any required notification.

Streamline Processing for Private Landowners

The Clinton Administration has simplified the process for landowners proposing activities in wetlands on their property. Landowners who wish to expand or construct homes, build farm structures, or expand small businesses when those activities will affect less than two acres of wetlands, will no longer have to consider alternative locations to avoid wetland impacts on-site. For these activities, landowners need only consider opportunities that allow the project to proceed while reducing environmental impacts.

The Clinton Administration also recognizes that all wetlands do not have the same value and, therefore, should not be regulated uniformly. The agencies have been directed to ensure that the level of review of projects proposed in wetlands is consistent with anticipated environmental impacts. Small projects with minor impacts will now require far less review than larger projects with more substantial impacts and those affecting high value wetlands. The result is reduced cost, less delay, and greater certainty for private landowners seeking permits.

Improve Efficiency of Permitting

The permitting process has been streamlined to increase efficiency for all permit applicants. In 1994, over 40,000 activities were approved under general permits in an average time of just 16 days. It is estimated that another 50,000 activities are covered each year by general permits that do not require the public to notify the Federal government at all. Of those activities requiring a more detailed individual evaluation, more than ninety percent were approved and processing took an average of 127 days.

Only 358, less than one percent of all Section 404 applications, were denied. In addition, progress has been made in reducing the backlog of permit evaluations more than two years old. In the last year, those applications have been reduced by 70 per cent, from 202 to just 41. 0

Empower State and Local Governments

The Clinton Administration agrees that wetlands issues are often most effectively addressed at State, local, and Tribal levels. As a result, federal agencies are working with State, local, and Tribal governments to take a greater role in protecting and managing their wetland resources. Efforts to increase State participation have been successful, and in 1994, New Jersey became the second State to formally assume responsibility for the Section 404 permit program.

States are also being encouraged to develop State Programmatic General Permits (SPGPs) to reduce duplication between State and Federal programs. Nationally, thousands of activities are processed by States rather than the Federal government under this mechanism. This tool offers an alternative to those States wishing to take a more active role in wetlands protection without taking on the entire permit program. Fourteen States have currently adopted SPGPs. To enhance these efforts, in May 1995, Federal agencies hosted a two-day workshop with the States on the development of SPGPs.

The State Wetland Grant Program continues to be very effective in helping States and Tribes develop comprehensive wetland programs. The State Grant Program grew from \$1 million in FY90 to \$15 million in FY95. It has funded the development and implementation of State Wetland Conservation Plans, Watershed Planning Projects, State assumption assistance and wetland water quality standards.

Simplify Mitigation Through "Banking"

To improve the effectiveness of wetlands mitigation efforts and inject more flexibility into the regulatory process, the Clinton Administration has taken steps to encourage the use of wetlands mitigation banks. "Mitigation" is the practice of off-setting, to the extent practicable, authorized wetlands losses through the restoration, creation, or enhancement of wetlands. Banks give greater flexibility to permit applicants by providing opportunities for wetlands mitigation more easily, at reduced cost, and with a greater certainty of success. A combination of larger scale, improved siting, and professional design and operation increase the likelihood of success for mitigation undertaken by banks, benefitting the environment as well. These latest efforts will speed up the approval process for proposed banks. Progress has already been made since August 1993, with the doubling of the number of banks from 100 to 200.

ACTIONS TAKEN TO ENHANCE EFFECTIVENESS

Incentives for Farmers

In an effort to provide economic assistance to farmers to restore and preserve wetlands on their property, the Wetlands Reserve Program (WRP) was expanded to cover all 50 states. The WRP assists farmers interested in restoring wetlands on their property by offering cash payments for placing conservation easements on their wetland property, as well as cost-sharing assistance for restoration work. Since 1990, this highly successful program has enrolled 125,000 acres of wetlands and associated buffer areas for restoration by approximately 650 farmers. With 1995 funds, USDA plans to enroll an additional 118,000 acres of wetlands in the program.

Clarify Regulated Activities

In an effort to improve protection of wetlands and increase fairness, the Clinton Administration closed a loophole that had previously allowed the destruction of thousands of acres of valuable wetlands each year from those engaging in actions involving small discharges of dredged or fill material that result in significant environmental degradation. This action clarified that regardless of the complicated and typically expensive methods being used by some to avoid regulation, activities that destroy wetlands such as excavation and landclearing do require a permit. This action does, however, explicitly exclude activities with only inconsequential environmental effects -- a common sense, risk-based approach to regulating.

Reduced "Net" Losses

Progress is being made to improve environmental protection. According to the most recent estimates on the rate of wetlands loss, from 1982 to 1992, approximately 70,000 to 90,000 acres of wetlands were lost each year on non-federal lands. That figure demonstrates improvement since the 1950s to 1970s when approximately 458,000 acres of wetlands were lost annually nationwide, and since the 1970s to 1980s when almost 290,000 acres of wetlands were lost per year. These figures reflect the effectiveness of a combination of programs which are reducing losses and fostering wetlands restoration, including the Clean Water Act, Swampbuster, on-going public and private wetlands restoration programs, and active State, local, and private wetlands protection efforts. By continuing these efforts, the goal of "no net loss" is achievable.

Expand Public Outreach Efforts

The toll-free Wetlands Information Hotline has provided information about wetlands functions, protection, and regulation to approximately 40,000 callers -- including students, teachers, farmers, landowners, State and local government officials, and consultants -- since it was established in 1991.

In addition, outreach to landowners has been expanded to identify and implement practical and cost-effective opportunities for protection of wetlands on private lands. Nonprofit organizations, States, local agencies, and landowners have worked with the Clinton Administration to address the needs of private landowners.

SUMMARY

The Clinton Administration is committed to improving wetlands programs, making them more fair and flexible for landowners and more effective. Through the August 1993 Administration Wetlands Plan, we are seeing results. Programs are working better and burdens on the public have been reduced. Additional improvements can and will be made as the other initiatives in the Administration Wetlands Plan are completed.