

Reference: RGL 82-03

Subject: EXEMPTIONS TO CWA-IRRIGATION

Title: IRRIGATION EXEMPTION IN SECTION 404(F)(1)(C) OF THE CLEAN WATER ACT

Issued: 01/25/82 Expires: 12/31/84

**Originator: DAEN-CWO-N Description: SPECIFIES THE TYPES OF
IRRIGATION FACILITIES EXEMPT FROM SEC 404.**

1. On 13 July 1981, Senator Gary Hart wrote to the Chief of Engineers concerning irrigation facilities and the Section 404(f)(1)(C) exemptions. We developed new language for the Section 404(f) implementing regulations and obtained EPA concurrence. On 25 January 1982, Ms. Anne Gorsuch, Administrator of EPA, advised Senator Hart that the Corps could implement the coordinated change immediately and that it was not necessary to wait for formal rulemaking. Therefore, since Attorney General Civiletti gave EPA the Section 404(f) call, district and division commanders should implement at this time the following 404(f)(1)(c) interpretation that will be published at 33 CFR 323.4(a)(3) and 40 CFR 123.92(a)(3):

"(3) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharges associated with irrigation facilities in the waters of the United States are included within this exemption unless the discharges have the effect of bringing these waters into a use to which they were not previously subject, where the flow or circulation may be impaired or reach reduced of such waters."

2. In essence, discharges associated with any irrigation facility, and not just those associated with irrigation ditches, are now eligible for exemption from Section 404.

3. This guidance expires 31 December 1984 unless sooner revised or rescinded.

FOR THE COMMANDER: