

Regulatory Guidance Letter 84-01

SUBJECT: Agricultural Conversion

TITLE: Regulatory Jurisdiction Over Vegetative Operations

DATE: January 10, 1984

EXPIRES: December 31, 1986

1. Regulatory Guidance Letter 82-11, Regulatory Jurisdiction over Vegetative Operations is rescinded. Revised guidance on that subject is provided below.

2. **Vegetation itself.** The removal of vegetation, either growing or dead, the placement of vegetation, and the planting of vegetation are not "work" as used in [Section 10 of the River and Harbor Act of 1899](#) unless the removal, placement, or planting:

1. Would take place in areas subject to Section 10 jurisdiction, and
2. Would affect the course, location, or condition of the water body in such a manner as to impact on the navigable capacity of the water body.

Substantial increases in soil erosion/sedimentation or substantial quantities of floating debris resulting from such activities would affect the navigable capacity of the water body and thus would require a Section 10 permit. Additionally, such activities are not a discharge of dredged or fill material and therefore do not require a Section 404 permit. The placement of vegetative matter into waters of the United States for the purpose of creating "fill" as defined in 33 CFR 323 requires a Section 404 permit, unless exempted by [Section 404\(f\)](#). The placement of vegetative matter into navigable waters of the United States which creates a structure as defined at 33 CFR 322.2(b) requires a Section 10 permit.

3. **Incidental soil movement.** Minimal ("*de minimis*") movement of soil, in and of itself, incidental to removal or planting of vegetation is not subject to Section 10, nor is its deposit considered to be a Section 404 discharge. If the removal of vegetation is accompanied by a land leveling operation which alters the topographic features of a "water of the U. S." through significant movement of soil, then:

- a. It is subject to Section 404.
- b. It is also subject to Section 10 if in a navigable water of the U.S.

4. District and division commanders should inform us about difficult or questionable applications of this guidance, particularly as related to land clearing activities. This information will be used in clarifying our jurisdiction.

FOR THE COMMANDER: