

# **Reference: RGL 84-05**

## **Subject: AGRICULTURAL CONVERSION**

### **Title: FIFTH CIRCUIT DECISION IN AVOYELLES VS MARSH**

**Issued: 03/26/84      Expires: 12/31/86**

**Originator: DAEN-CWO-N**

**Description: EXPLAINS FINDINGS OF US 5TH CIRCUIT COURT  
CONCERNING 404 JURISDICTION IN LAND CLEARING ACTIVITY IN  
LOUISIANA.**

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1. On September 26, 1983, the United States Court of Appeals for the Fifth Circuit issued its decision in Avoyelles Sportsman's League v. Marsh. This decision is explained below and is adopted nationwide.
  2. The court decided that certain land-clearing activities on the Avoyelles tract resulted in the discharge of fill material in a wetland considered a water of the United States under the Clean Water Act. The court found that equipment (bulldozers and backhoes) filled sloughs, side cast material excavated from a drainage ditch, and leveled the land. The court further decided that the activities were not exempt from the Section 404 permit requirement under subsection 404(f)(1) because they were covered by the terms of 404(f)(2).
  3. The Fifth Circuit also decided that the government's methodology used in Avoyelles to determine the extent of wetlands subject to Section 404 of the Clean Water Act was not unreasonable. Nevertheless, the court did not determine that this methodology was the only methodology which can be used for that purpose.

FOR THE CHIEF OF ENGINEERS: