

# **Reference: RGL 86-03**

## **Subject: EXEMPTIONS TO CWA-ROADS**

**Title: SECTION 404(f)(1)(e) EXEMPTION OF FARM AND FOREST  
ROADS (33 CFR PART 323.4(a)(6))**

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**Description: CLARIFIES 404(f) EXEMPTION FOR FARM AND FOREST  
ROADS BY STATING THAT ROADS CONSTRUCTED PRIMARILY FOR  
THESE PURPOSE MAY BE EXEMPT FROM 404 EVEN THOUGH  
INCIDENTALLY USED FOR OTHER PURPOSES.**

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1. EPA headquarters provided the following guidance to its Region X about what constituted a forest road, the construction of which is exempted by Section 404(f)(1)(E) of the Clean Water Act:

"The determination whether a road is a forest road under Section 404(f)(1)(E) is not limited to consideration of its use in tree harvesting per se. That is, a forest road may be intended to provide access for planting, fire control, or similar silviculture support activities. A road initially used to transport gravel for use in building roads for harvesting trees, and which subsequently will itself be used directly in harvesting, may also reasonably be considered a forest road.

Of course, all the above assumes that the road is intended to be used solely for such forest functions. For example, if the road to the gravel pit were also used to transport gravel for uses other than building and maintaining forest roads, it would not be eligible for the exemption as a forest road. Similarly, if a road through a national forest would principally serve tourists visiting a recreational site in the forest, not the actual business of silviculture, it would not be a forest road."

2. Further, because farm roads are covered by the same provision of law and regulation, the above guidance is also applicable to farm roads.

3. Districts should exercise care when interpreting the word solely as indicated by EPA's reference to principal use. Any road will be subject, on occasion, to various uses.

4. To qualify for a Section 404(f) exemption, a forest or farm road must comply with the requirements of 33 CFR 323.4(a)(6), 33 CFR 323.4(b), and 33 CFR 323.4(c) (implementing Section 404(f)(2)).

Specifically with reference to 33 CFR 323.4(c), the forest or farm road must be part of an ongoing silviculture, farming or ranching operation, which will not bring new areas into use, and which will comply with best management practices of 33 CFR 323.4(a)(6).

5. This guidance expires 31 December 1988 unless sooner revised or rescinded.

FOR THE CHIEF OF ENGINEERS: