



Charleston District Agricultural Irrigation Pond Exemption Guide

Regulatory Division
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A. Purpose:

The purpose of this document is to provide guidance related to Clean Water Act Section 404(f) exemptions and the construction of agricultural irrigation ponds.

B. Definitions:

Agricultural Irrigation Exemption – Under Section 404(f) of the Clean Water Act, activities involving the discharge of dredged or fill material into waters of the United States associated with the irrigation of crops or livestock watering as part of a normal farming, or ranching operation that are not subject to regulation under Section 404.

Exemption Information Paper – A document providing information on the farming, or ranching operation, including the size of the agricultural operation, the water requirements, and site information. Producers requesting Corps verification that activities associated with construction of an agricultural irrigation pond qualify as a Section 404f exemption will be required to sign and submit the exemption information paper to the Corps along with items listed in the Agricultural Irrigation Pond Exemption Determination Checklist.

Irrigation Pond – An impounded water source created by constructing an embankment or excavating a pit that is intended to provide water for the irrigation of crops or livestock operations.

Producer - Individual(s) that grow agricultural crops or breed livestock for food or fiber.

Water Needs Determination – A water needs determination establishes the baseline of water quantity necessary to sustain the water supply for a typical livestock or cropping system. Crop water requirements shall be based on water needs as provided in the NRCS South Carolina Irrigation Guide. Livestock water needs shall be based on NRCS values for livestock water requirements. The water needs determination must define the pond storage requirements in acres-feet and is subject to review and approval by the Corps.

C. Irrigation Pond Construction:

In order to qualify for a Clean Water Act Section 404(f) agricultural exemption, the pond size shall not exceed the irrigation needs as determined by an approved water needs determination. Ponds of smaller size, and ponds sited to minimize impacts, are more likely to be exempt. Examples of minimization may include 1) constructing the pond on smaller or non-perennial streams; 2) constructing an off-stream diversion to site the pond outside of the stream channel; 3) constructing the pond to maintain minimum base flows so there is no removal of hydrology to downstream wetlands and no adverse water quality impacts in downstream waters; and (4) constructing the pond in locations that will avoid impacts to forested wetlands with important environmental functions. **A permit will be required for any discharge of dredged or fill material into waters of the US associated with pond construction if the purpose is to convert a jurisdictional area into a use to which it was not previously subject, where the flow or circulation of waters may be impaired or the reach of such waters reduced.** In waters of the US, the placement of fill material will be limited to dam or berm construction. Land clearing (stump removal) will be limited to the dam or berm, including auxiliary spillway entry and exit sections, and normal pool footprint.

D. Producer Eligibility:

To be eligible for the Clean Water Act Section 404(f) agricultural irrigation pond exemption, the person requesting the exemption must be an agricultural producer who engages in agriculture or livestock production. Agriculture and livestock production are defined below.

E. Agricultural production:

Agricultural production is defined as a farm or ranch operation involving the production of crops including but not limited to:

- Grains or row crops
- Plant materials
- Orchards or vineyards
- Tobacco
- Seed Crops
- Vegetables or fruits

Note: Aquaculture activities are not considered exempt activities unless they occur in conjunction with rice production. Sod Farms are not considered an exempt activity. Generally, Hay, Forage, and Pasture irrigation is not considered an economically feasible activity in South Carolina. These will be considered on a case-by-case basis.

F. Livestock production:

Livestock production is defined as a farm or ranch operation involving the production or reproducing of livestock or livestock products, including but not limited to:

- Beef/Dairy cattle
- Poultry
- Buffalo
- Sheep or goats
- Ostriches or Emu
- Swine

G. Minimum pond depth and storage period:

For a permanent agricultural water supply, it is necessary to provide sufficient water depth to meet the intended use taking into account seepage and evaporation losses. For this reason, ponds for irrigation and livestock purposes usually have at least 8 ft. of water at the deepest part of the pond. In South Carolina, the maximum storage period is one year for livestock or the growing season for crops.

I. Mitigation:

CWA: Any discharge of dredged or fill material that may result from the construction of appropriately sized and located farm or stock ponds or irrigation ditches is not prohibited by or otherwise subject to regulation under section 404 of the CWA (33 CFR Section 323.4). Therefore, no compensatory mitigation is required. However, agricultural ponds that do not meet exemption requirements or ponds constructed in waters of the US associated with recreational, residential, aesthetic, or any other non-exempt activities are subject to permitting requirements under the Clean Water Act. Non-exempt activities in waters of the US will be evaluated on a case-by-case basis by the Corps. Non-exempt activities may require a permit and compensatory mitigation.

J. Recapture Provision:

The exemption from regulation for agricultural activities is subject to a significant qualifying provision in section 404(f) (2), known as the “recapture provision,” which states that:

Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of navigable water into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

In the event that a proposed discharge does not meet the eligibility requirements to qualify for an exemption under Section 404 (f) of the Clean Water Act (see 33 CFR 323.4), the applicant may wish to pursue other options. Please contact the Charleston District Corps of Engineers for additional information:

Charleston Regulatory Office
69-A Hagood Avenue
Charleston, SC 29403
Phone: (843)329-8044
Fax: (843)329-2332

Columbia Regulatory Office
Strom Thurmond Federal Bldg
1835 Assembly St., Rm 865/B-1
Columbia, SC 29201
Phone: (803)253-3444
Fax: (803)253-3446

Conway Regulatory Office
1949 Industrial Park Road
Room 140
Conway, SC 29526
Phone: (843)365-4239
Fax: (843)365-4318

**AGRICULTURAL IRRIGATION POND
EXEMPTION DETERMINATION CHECKLIST**

1. ___ A completed and signed Agricultural Exemption Information Form.

2. ___ Property owner's full name, mailing address and daytime telephone number. Include the name of a contact person if the owner is a company or other organization.

3. ___ If the property owner is not the producer, the producer's full name, mailing address, day time telephone number and relationship to the owner.

4. ___ The latitude/longitude coordinates for the pond location in decimal degrees.

5. ___ A water needs determination (acre-feet water requirements) demonstrating the landowners need to provide water for livestock operations and/or crop irrigation.

6. ___ Vicinity and location maps showing the proposed pond site and property boundaries. Excerpts of US Geological Survey topographical quadrangle maps, county road maps, or other similar maps may be used. Vicinity maps must be scaled appropriately to locate the site by nearby landmarks.

7. ___ A soils map with the pond location and boundaries superimposed on the map. The map must include the total pool area (acres), the acres of wetlands and/or linear feet of stream channel that will be filled for the footprint of the dam, and the acres of wetlands and/or linear feet of stream channel that will be flooded for the pool elevation.

8. ___ For crop irrigation, state the method of irrigation and provide an aerial photograph identifying areas to be irrigated.

9. ___ A written statement documenting all other water sources and stating why those sources are inadequate.

10. ___ Provide estimated date of pond construction.

11. ___ Provide details regarding avoidance and minimization measures taken to ensure only minimal impacts to aquatic resources.
 - a. ___ The pond is sited on a smaller or non-perennial stream.
 - b. ___ The design includes an off-stream diversion to site the pond outside the stream channel.
 - c. ___ The pond is designed to maintain minimum base flows.
 - d. ___ Forested wetlands with important environmental functions will not be converted to open water.

Note: All information must be on 8 1/2 " X 11" paper and must be legible and reproducible.

AGRICULTURAL IRRIGATION POND EXEMPTION INFORMATION FORM

PRODUCER INFORMATION			
Name:			
Mailing Address:			
City, State, Zip Code:		County:	
IRRIGATION POND INFORMATION			
Primary Purpose (Crop irrigation/livestock water):		Pond Site Location (Provide Lat/Long in deci-degrees):	
Size at Normal Pool (total size of pond in acres):		Estimated Storage at Normal Pool (ac-ft):	
Wetlands acreage/Stream channel linear feet (fill for the dam/embankment):		Wetlands acreage/Stream channel linear feet (flooded):	
CROP OR LIVESTOCK INFORMATION			
Agricultural Operation Description (Include start date of operation/years of production, property size, etc.):			
Crop type:	Cropped acreage (ac.):	Crop water needs (ac-ft):	
Livestock Type:	Herd size:	Livestock water needs (ac-ft):	
Additional Water Needs (ac-ft):		Total Farm/Ranch Water Needs (ac-ft):	

Producer Certification:

◦I certify this request is for a legitimate farming operation and the above information is correct.

◦I understand that should the Corps determine I have provided false information, I may be in violation of federal law and subject to fines of up to \$32,500.00 per day for each violation

◦I understand that this exemption does **NOT** free me from obtaining any other federal, state, or local permits for construction of the proposed pond.

◦I understand that if revisions to the project or its intended use occur, this exemption determination is no longer valid and I must notify the Corps of changes to my project.

◦If the Corps determines that the proposed pond has been converted to a non-agricultural use at any time in the future, I may be required to obtain a Department of the Army (DA) permit in order to maintain the pond. The DA permit application must include an alternatives analysis and mitigation proposal. If the Corps denies the permit request, restoration of the pond site will be required.

◦By signing this document, I understand that I cannot convert a jurisdictional area into a use to which it was not previously subject, where the flow or circulation of waters is impaired or the reach of such waters reduced. I agree to allow representatives from the Corps to access my property for compliance.

(Type or print name)

(Signature)

(Date)