

Subject: Airport drainage ditches and Section 404 Requirements

From: Manager, Community and Environmental Needs Division, APP-600

To: Airport Division Manager, ATTN: Environmental Specialists

Reply to the Attn. of: Ed Melisky (202) 267-5869

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PURPOSE

Many airport operators and FAA Environmental Specialists may be unsure about the applicability of Section 404 permit requirements to the maintenance of drainage ditches conveying airport runoff. As a result, airport operators often unnecessarily apply for Section 404 permits. This memo clarifies Section 404 requirements as they relate to drainage ditches. This clarification should reduce any confusion surrounding drainage ditch maintenance and reduce the number of Section 404 permit applications that airport operators prepare.

BACKGROUND

Between airport drainage ditch maintenance activities, ditches often develop sediment build-up, hydrological regimes, and soil conditions that support wetland vegetation. When the airport operator determines that ditch maintenance is needed to properly control water on the airport, the operator often assumes that it must first obtain a Section 404 permit, because the ditches now have the soil, hydrology, and vegetation that normally comprise jurisdictional wetlands. Initiating the Section 404 process for such activities may be an unnecessary burden, since Section 404 regulations contain an exemption for drainage ditch maintenance (33 CFR, Part 323.4a.3.).

WHEN IS A SECTION 404 PERMIT UNNECESSARY FOR DRAINAGE DITCH MAINTENANCE?

The airport operator need not obtain a Section 404 permit to maintain an existing drainage ditch, provided the following conditions pertain to the ditch:

- the ditch must not be located in a jurisdictional wetland or effectively drain such a wetland;
- the material removed from the ditch must not contain toxic pollutants; and
- the discharge of material removed from the ditch must not cause significant, discernable flow or circulation alterations in any waters of the United States or navigable waters (33 CFR, Part 323.4c.).

One further consideration is the Corps of Engineers policy reserving the right, on a case-by-case basis, to determine if a Section 404 permit is necessary for maintaining non-tidal drainage ditches initially excavated on dry land. Before commencing such maintenance, we suggest that the airport operator consult with the responsible Corps District Engineer office or responsible state agency to inquire if the Corps or agency will require a permit.

WHAT ARE "WATERS OF THE UNITED STATES?"

This term has been broadly interpreted by the courts, EPA, and the Corps over the years. It now includes virtually all waterbodies and wetlands, so it's always better to check with the Corps or state than to assume there is no link to interstate or foreign commerce.

Generally, such waters have been used, are presently used, or may be used for commercial navigation. These waters include all interstate waters (including interstate wetlands), intrastate lakes, rivers, streams, mud flats, wetlands and sloughs whose use, degradation, or destruction could affect interstate or foreign commerce. Note that interstate or foreign travelers may use these waters for recreational or other purposes. Additionally, such waters provide habitats for shellfish and fish taken for interstate or foreign commerce. Such waters could also be used for industrial purposes by industries involved in interstate commerce. (See 33 CFR, Part 328 for more detailed definition, if needed).

WHAT ARE "NAVIGABLE WATERS OF THE UNITED STATES?"

Generally, these are waters that are subject to tidal ebb and flow that extend shoreward to the high water mark. They have been used, are presently used, or have the potential for future use to transport interstate or foreign commerce. (See 33 CFR, Part 329 for more information, if needed).

CORPS HOMEPAGE:

You can find regulations pertaining to the Section 404 permit process at 33 CFR, Parts 320-329 and on the Corps' Sacramento District Office's homepage. The page address is: <http://wetland.usace.mil>. We suggest that you review this internet site (see the homepage section dealing with COE Regulations), for future reference on this process, as needed.

If you have any questions concerning this memo, please call Ed Melisky at the number provided on page 1.

Original signed by

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