



Natural Resources Conservation Service
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December 3, 2009

**GENERAL MANUAL
PA 450 – TCH
Part 405, Supplement No. 1**

SUBJECT: TCH – Compliance with Wetland Laws and Regulations

Purpose. To supplement GM policy for complying with Federal, State and local laws and regulations protecting wetlands.

Effective Date. This Supplement is effective when received.

Background. Wetlands are protected by Federal, State, and local laws and regulations in Pennsylvania. In providing technical assistance in planning, constructing, operating, and maintaining conservation practices, NRCS will assure that land owners and operators comply with Federal, State, and local laws and regulations protecting wetlands.

Filing instructions. This Supplement should be filed at the front of Title 450, Part 405, Subpart A in the General Manual.

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DIST: GM Holders



Title 450 – Technology
PART 405 – Federal, State and Local Laws and Regulations
Subpart A – Compliance with Laws and Regulations

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PA405.1 - Land Owners or Operators Responsibility

Land owners or operators are responsible complying with Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), State Chapter 105 regulations, and any local laws and regulations protecting wetlands. This includes applying and operating conservation practices in accordance with applicable wetland protection laws, rules, and regulations. NRCS employees are not to assume responsibility for procuring permits, rights, or approvals or for enforcing laws and regulations.

PA405.2 – NRCS Responsibility

NRCS employees providing technical assistance for the conservation practices or activities listed below must have enough knowledge of the following federal and state wetland protection regulations to carry out the NRCS national policies contained in this Part of the General Manual:
<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=19434>

– Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500),
http://www.usace.army.mil/CECW/Pages/reg_materials.aspx

including U.S. Army Corps of Engineers Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
http://www.usace.army.mil/CECW/Documents/cecwo/reg/nwp/nwp_2007_final.pdf
{Scroll down to p. 11185}

– Pennsylvania state Chapter 105 wetland regulations, including waivers specific to agricultural operations (Waivers No's. 7 & 8) and wetland restoration (Waiver No. 16),
<http://www.pacode.com/secure/data/025/chapter105/chap105toc.html>

and General Permit No. 9, Agricultural Activities
<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-72817/3930-PM-WM0509.pdf>

Contour Stripcropping

Ditching

Diversion
Earthmoving activities in wetland
Grassed waterway
Lined waterway
Land clearing
Spring development
Subsurface drain
Underground outlet
Waste storage facilities
Wetland Enhancement
Wetland Restoration

National policy also requires NRCS employees to be knowledgeable of any local wetland protection laws, rules, and regulations, and be able to refer land owners or operators to the appropriate local agency or official.

PA405.3 – NRCS Guidance Material

NRCS employees providing technical assistance for the conservation practices or activities listed above will complete training from State Office Specialists or staff from other federal, state, and local agencies on the general requirements of wetland protection laws, rules, and regulations.

As described in GM 190, 410.26, PA Supplement No. 1, if a NRCS *preliminary wetland determination* on non-agricultural or forest land indicates a wetland may be present and NRCS determines at any time that there may be an adverse impact, NRCS will recommend avoidance of the impact. <http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21088>

If avoidance of an adverse impact is not practicable, NRCS will take no further action until the owner/operator obtains a *jurisdictional wetland determination* to satisfy Section 404 of the federal Clean Water Act and/or state Chapter 105 regulations.

Whenever a jurisdictional wetland determination is required, it is the owner/operator's responsibility to contact the United States Army Corps of Engineers (U.S. COE) and/or the Pennsylvania Department of Environmental Protection (PA DEP) to obtain one. After the jurisdictional wetland determination is completed, NRCS will coordinate with these agencies and the landowner and any operator to determine if a practicable alternative exists.

Federal Clean Water Act (1977)

http://www.usace.army.mil/CECW/Pages/reg_materials.aspx

Section 404 - Authorizes the U.S. Army Corps of Engineers to regulate discharges of dredged or fill materials into the waters of the United States. 33 CFR Part 323

Dredged Material - means material that is excavated or dredged from waters of the United States. 33 CFR Part 323.2

Discharge of Dredged Material - The Corps and EPA considers use of **mechanized earth-moving equipment** to conduct land clearing, ditching, channelization, in-stream mining or other earth-moving activity in the waters of the United States **as resulting in a discharge of dredged material** unless project-specific evidence shows that the activity results in only incidental fallback. 33 CFR Part 323.2

Fill Material - Examples of fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, and overburden from mining or other excavation activities. 33 CFR Part 323.2

Discharge of Fill Material - The addition of fill material into waters of the United States. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products. 33 CFR Part 328

Waters of the United States - The definition of Waters of the United States includes wetlands. 33 CFR Part 328

Wetlands - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 33 CFR Part 328

Discharges require permits - Permits will be required for the discharge of dredged or fill material into waters of the United States. 33 CFR Part 323.3

Discharges require permits (cont'd) - Discharge of fill material where the flow or circulation of waters of the United States may be impaired or the reach reduced must have a permit if the purpose is to convert an area of the waters of the United States into a use to which it was not previously subject. A conversion of a Section 404 wetland to a non-wetland is a change in use of an area of waters of the United States 33 CFR Part 323.4(c)

Nationwide Permit (NWP) No. 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities - Permits wetland restoration activities in Waters of the United States. 33 CFR Part 330

NOTE - U.S. Army Corps of Engineers Districts covering Pennsylvania (Philadelphia, Baltimore & Pittsburgh) made "pre-construction notification" to them a requirement for the use of NWP No. 27.

Pennsylvania Dam Safety and Encroachment Act, Chapter 105 (1978)

<http://www.pacode.com/secure/data/025/chapter105/chap105toc.html>

*Regulates water obstructions and **encroachments** located in, along or across, or projecting into a watercourse, floodway or **body of water**, whether temporary or permanent.*

§ 105.3(4)

Encroachment - *A structure or activity which changes, expands or diminishes the course, current or cross section of a watercourse, floodway or **body of water**.*

§ 105.1

Body of water - *A natural or artificial lake, pond, reservoir, swamp, marsh or **wetland**.*

§ 105.1

Wetlands - *Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.*

§ 105.1

Permit requirements - *A person may not construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or **encroachment** without first obtaining a written permit from the Department.*

§ 105.11(a)

Waiver of Permit Requirements - *The requirements for a permit are waived for the following structures or activities:*

- *Maintenance of field drainage systems*
- *Plowing, cultivating, seeding or harvesting for crop production*

§ 105.12 (7) & (8)

Prior Converted Cropland - *Is not regulated as wetlands under the Commonwealth's Wetland Protection Program contained in Chapter 105.*

§105.452

NOTE – *PA's definition of prior converted cropland is based on NRCS's Third Edition (March 1994) of the National Food Security Act Manual, and therefore still includes NRCS's former **Abandonment** provision (five years without an annual crop).*

§105.452(c)(1)

§105.452 does not exempt any other NRCS Wetland Conservation/Swampbuster label that meets wetland criteria other than non-abandoned Prior Converted Cropland (PC); therefore, **NOTE** – Farmed Wetland Pasture or Hayland (FWP) and Artificial Wetland (AW) are regulated.

General Permit No. 9, Agricultural Activities - *Authorizes certain agricultural activities that encroach into streams and their floodways or bodies of water: grassed or lined waterways, terraces, diversions, waste storage facilities, spring development and minor drainage that supports these activities and is necessary for contour strips. And shall only be implemented as part of a conservation plan consistent with Chapter 102 (relating to erosion and sediment*

control) and approved by the County Conservation District:

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-72817/3930-PM-WM0509.pdf>

Registration of Proposed Use of General Permit - *Prior to construction, the owners shall submit the required information to the DEP Regional Office or the County Conservation District (those with delegated authority from DEP). A copy shall also be sent to the municipalities and county in which the work will be performed.). The owners may not begin work until they have notified the DEP Regional Office or County Conservation District (if appropriate) and received an acknowledgement of that notification. The reply acknowledgement letter serves as registration to use this General Permit.*