



Natural Resources Conservation Service  
760 South Broadway  
Salina, Kansas 67401-4604

Phone: 785-823-4500  
FAX: 785-823-4540  
www.ks.nrcs.usda.gov

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August 14, 2012

**KANSAS BULLETIN NO. KS210-12-4**

**SUBJECT: ENG—Clean Water Act Exemption**

**Purpose.** To cancel Kansas Bulletin KS210-12-3 and to provide guidance on the Clean Water Act (CWA) exemption for the Kansas Division of Conservation (DOC) Pond Restoration Code No. 378D

**Expiration Date.** September 30, 2013

The DOC is offering cost-share assistance for Pond Restoration Code No. 378D to improve livestock water supplies. Section 404 of the CWA provides an exemption for the construction and maintenance of livestock ponds.

Restoration work in existing stockponds associated with the Kansas DOC Pond Restoration is exempt. Notification to and review by the U.S. Army Corps of Engineers (USACE) is **not** required under the following circumstances:

- The work is for the purpose of maintaining the impoundment for livestock water.
- The work does not result in an increase in the height of the existing dam structure.
- The work does not result in an increase in surface acres from the size of the original pond construction.
- Any material excavated from the pond is removed to upland areas and not deposited into any streams or wetlands.

The maintenance around any existing livestock ponds of features such as siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities; removal of undesirable vegetation from the dam structure; and repair of erosion issues around the spillway are also all exempt and are not subject to review by the USACE.

Activities that would need to be reviewed by the USACE and would need to follow routine coordination and permitting procedures are as follows:

- Any work that occurs in a watershed district impoundment that was constructed for flood control or an impoundment that was permitted for multi-use purposes.
- The construction of any new pond, including spring development projects.
- Any work in large farm ponds such as those used for irrigation or agri-businesses (for example, Concentrated Animal Feeding Operations [CAFOs]).

(more)

DIST: A, F, S

If restoration work is approved on a pond that is of a size that it is regulated by the Division of Water Resources (DWR), contact the area engineering staff to discuss DWR requirements.

Document use and justification of a CWA exemption on Form NRCS-CPA-6, Conservation Assistance Notes, in the case file.

**Contact:** Please forward your questions through established channels to Andrew Burr, State Biologist, at 785-823-4593, or [andy.burr@ks.usda.gov](mailto:andy.burr@ks.usda.gov).

*(signed)* JEFFREY L. GROSS, ACTING FOR

ERIC B. BANKS  
State Conservationist