

nearly 5 inches of rain since May 1. A strong temperature inversion over Indiana at midday on the 17th likely resulted in strong moisture gradients leading to the AP experienced. In conclusion, the Terre Haute AFSS is satisfied with NWS efforts to improve radar data but still wants to see further improvement. In our opinion, the AFSS specialists can recognize AP and correctly distinguish precipitation and non-precipitation targets for pilots. We conclude the Indianapolis WSR-88D is meeting the needs of our customers.

The MTC considered these 18 consolidation certifications and the public comments received, and endorsed them at its June 27, 1996 meeting, concluding that these certifications would not result in any degradation of service.

- (1) WSO Allentown, PA
- (2) WSO Atlanta, GA
- (3) WSO Bakersfield, CA
- (4) WSO Beckley, WV
- (5) WSO Bridgeport, CT
- (6) WSO Charleston, WV
- (7) WSO Columbus, GA
- (8) WSO Dubuque, IA
- (9) WSO Elkins, WV
- (10) WSO Huntington, WV
- (11) WSO Indianapolis, IN
- (12) WSO Las Vegas, NV
- (13) WSO Lubbock, TX
- (14) WSO Macon, GA
- (15) WSO Minneapolis, MN
- (16) WSO Portland, OR
- (17) WSO Salem, OR
- (18) WSO Wilkes-Barre, PA

The third group, consisting of 10 consolidations, were proposed and the 60-day public comment period commenced upon publication of a Federal Register notice in July 1996. There were no public comments received. The MTC considered and endorsed these 10 consolidation certifications at its September 19, 1996 meeting, concluding that these certifications would not result in any degradation of service.

- (1) WSO Baton Rouge, LA
- (2) WSO Columbia, MO
- (3) WSO Des Moines, IA
- (4) WSO Lansing, MI
- (5) WSO Lexington, KY
- (6) WSO Lincoln, NE
- (7) WSO Louisville, KY
- (8) WSO Montgomery, AL
- (9) WSO Sioux City, IA
- (10) WSO St. Louis, MO

After considering any public comments received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved all 70 consolidation certifications and transmitted them to Congress on January 2, 1997.

Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements by publishing the final consolidation certifications in the Federal Register.

Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97-892 Filed 1-14-97; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Semiconductor Technology Council will hold its sixth meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster precompetitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c)(3) and (4), Title 5, U.S.C. There will be an open session from 1:30 p.m. to 2:00 p.m.

DATES: January 27, 1997.

ADDRESSES: Washington Room, Key Bridge Marriott, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Kaigham J. Gabriel, Director, DARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203-1714; telephone: 703/696-2252.

Dated: January 9, 1997.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 97-889 Filed 1-14-97; 8:45 am]
BILLING CODE 5000-04-M

Department of the Army

Notification of Location and Hours of Operation for Armed Forces Discharge Review/Correction Board Reading Room

AGENCY: Army Review Board Agency.

ACTION: Notice.

SUMMARY: In compliance with DoD Directive 1332.28D1f, the Secretary of the Army hereby gives notice of the location, hours of operation and similar types of information regarding the Reading Room. The Reading Room is located in the Pentagon, Room 2E123. Effective February 15, 1997, the hours of operation are Thursday from 7:30 am to 4:00 pm.

FOR FURTHER INFORMATION CONTACT: CPT Bronté I. Flood, Army Review Board Agency, 1941 Jefferson Davis Highway, Crystal Mall #4, Room 204, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Discharge Review Board (DRB) documents made available for public inspection and copying are located in the Reading Room. The documents are indexed in a usable and concise form so as to enable the public, and those who represent applicants, to isolate from all decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for which the DRB or the Secretary concerned granted or denied relief.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 97-916 Filed 1-14-97; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Regulatory Guidance Letter 96-2

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public of the issuance of the U.S. Army Corps of Engineers (Corps) Regulatory Guidance Letter (RGL) regarding the joint U.S. Environmental Protection Agency (EPA) and Corps memorandum to the field clarifying the applicability of exemptions under Section 404(f) of the Clean Water Act to "deep-ripping" activities in wetlands.

DATES: Effective date December 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Cole, Regulatory Branch, Office of the Chief of Engineers at (202) 761-0201 or Mr. Michael Boots, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency at (202) 260-2315.

SUPPLEMENTARY INFORMATION: Regulatory Guidance Letter 96-2 was issued on December 12, 1996. The memorandum

attached with RGL 96-2 was developed jointly between the Corps and EPA to provide written guidance for our field offices. EPA is responsible for determining and/or interpreting which activities are exempt under Section 404(f) of the Clean Water Act. Questions have been raised involving "deep-ripping" and related activities in wetlands, including whether discharges associated with these actions fall within the exemption found at Section 404(f)(1)(A). Furthermore, the question has been raised whether such activities falling under that exemption would be recaptured under Section 404(f)(2). The memorandum enclosed with RGL 96-2 clarifies this issue.

Dated: December 12, 1996.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

RGL 96-2, Date: 12 Dec. 1996, Expires: 31 December 2001

Subject: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when "deep-ripping" activities within wetlands require Department of the Army authorization.

2. This guidance expires 31 December 2001, unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

12 Dec 1996.

Memorandum to the Field

Subject: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

Purpose: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with "deep-ripping" and related activities in wetlands.¹

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching

practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 404(f)(2).

2. Section 404(f)(1) does not provide a total, automatic exemption for all activities related to agricultural, silvicultural, or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and "other activities of essentially the same character as named" [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from "normal farming, silvicultural, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices."

3. Section 404(f)(1)(A) is limited to activities that are part of an "established (i.e., ongoing) farming, silviculture, or ranching operation." This "established" requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 404 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific "normal" activities listed in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words "such as" have been consistently interpreted as restricting the section "to the activities named in the statute and other activities of essentially the same character as named," and "preclude the extension of the exemption * * * to activities that are unlike those named." [44 FR 34264].

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)(iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a "change in use" within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a

change in use of the site [See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that "recaptures" or reestablishes the permit requirement for those otherwise exempt discharges which:

- a. convert an area of the waters of the U.S. to a new use, *and*
- b. impair the flow or circulation of waters of the U.S. *or* reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provisions (a) and (b) above. Thus, at a minimum, any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)(2) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be "incidental to" or "part of" an activity which is intended to or will foreseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving "deep-ripping" and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. "Deep-ripping" is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (e.g., impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such, it requires the use of

¹ As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR 230 and 33 CFR 320] as "all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops" [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual, or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel, or series of blades, chisels, or discs, usually 8–10 inches in length, pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. it is conducted as part of an ongoing, established agricultural, silvicultural, or ranching operation; and

b. the activity is consistent with the definition of plowing in EPA and Corps regulations [40 CFR 230 and 33 CFR 320]; and

c. the plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (e.g., discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of specialized equipment,

including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a "natural" system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established ongoing farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the soil surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established, ongoing agricultural,

silvicultural, or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal, ongoing activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural, silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the "recapture" provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas and similar depressional wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works U.S. Army Corps of Engineers.

[FR Doc. 97–915 Filed 1–14–97; 8:45 am]

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