

FEDERAL STATUTES

Federal statutes do not address drainage topics extensively, but some sections do contain pertinent and potentially significant information. Some of the most controversial issues for drainage districts in the past 20 years have been initiated through federal legislation. The federal Clean Water Act as implemented through the states and interpreted and applied by the Corps of Engineers and Fish and Wildlife Service has undoubtedly had significant impact on drainage district maintenance in many instances. The Food Security Act represented a major shift in the federal government's emphasis in agricultural activities, particularly the wetland conservation provisions of that act.

With the implementation and enforcement of these federal acts, the expansion and even maintenance of drainage facilities has changed. Agencies and landowners are exploring ways to reduce the need to clean ditches and outlets. Preserving the facilities already built to ensure they provide the intended drainage is more important than in the past. Many successful projects are being completed by those who recognize opportunities to work with other government and private groups to mitigate wetland loss and address common concerns.

Food Security Act of 1985 (As amended through Public Law 108-7, February 20, 2003)

Transportation implications

Significant implications for transportation agencies are not obvious, but the many references to wetlands may be of interest to governmental agencies and others when dealing with transportation issues relating to drainage. Road or other improvements affecting existing United States Department of Agriculture (USDA) jurisdictional wetlands will impact property owner rights to participate in all USDA agricultural

programs including crop price supports, marketing loans, and conservation programs such as Wetlands Reserve. Any such potential impacts should be thoroughly considered and discussed with land owners and Natural Resources Conservation Service (NRCS) staff.

Overview

This act includes provisions designed to promote the conservation of wetlands on agricultural lands. These provisions, commonly known as the "Swampbuster" provisions, are codified in the United States Code as Title 16, Chapter 58, "Erodible Land and Wetland Conservation and Reserve Program." The 1990 Farm Bill strengthened the swampbuster provisions by making violators ineligible for farm benefits. A system was also created for allowing inadvertent violators to regain lost benefits by restoring converted wetlands.

This statute, under Title XII-Conservation, contains the following subtitles:

A: Definitions

Included are converted wetland, highly erodible land, hydric soil, and hydrophytic vegetation.

B: Highly Erodible Land Conservation

With limited exceptions, the Act provides that persons who produce agricultural commodities on highly erodible lands are ineligible for certain federal subsidies.

C: Wetland Conservation

This section describes program ineligibility and the process of identifying and delineating the different classes of USDA jurisdictional wetlands. Exemptions to the ineligibility provisions are listed, including any conversions initiated prior to December 23, 1985. The mitigation process for restoring wetland converted after 1985 to regain benefits is also described. The Secretary of Agriculture is directed to delineate wetlands on

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maps for reference by property owners. Any restoration and mitigation plans, as well as monitoring activities, are the responsibility of the NRCS.

D: Agricultural Resources Conservation Program

Chapter 1 – Comprehensive Conservation Enhancement Program

This chapter contains many references to wetlands on agricultural lands. Both Subchapter B, Conservation Reserve, and Subchapter C, Wetlands Reserve Program, extensively describe programs available to eligible landowners for preserving, enhancing, and restoring wetlands. Responsibilities of owners, payments, and penalties for non-compliance are also described. While the preponderance of the impact from the Act is directed toward private property owners, Department of Agriculture agreements with states, political subdivisions, and other agencies regarding wetland preservation are also briefly described in Subchapter C. Other than brief mention in Chapters 4 and 5, further reference to wetlands is not made in the Act.

- Subchapter A: General Provisions
- Subchapter B: Conservation Reserve

The Conservation Reserve Program is intended to protect eligible land (highly erodible croplands, marginal pastures, etc.) through contracts with owners and operators to conserve and improve the soil, water, and wildlife resources of the land.

- Subchapter C: Wetlands Reserve Program

The Wetlands Reserve Program assists eligible owners and operators in restoring and protecting wetlands on agricultural lands. Acreage is enrolled into the wetlands reserve

system through use of permanent easements, 30-year easements, restoration cost share agreements, or a combination of these options.

Chapter 2 – Conservation Security And Farmland Protection

- Subchapter A: Conservation Security Program
- Subchapter B: Farmland Protection Program
- Subchapter C: Grassland Reserve Program

Chapter 3 – Environmental Easement Program

Chapter 4 – Environmental Quality Incentives Program

Chapter 5 – Other Conservation Programs

E: Funding and Administration

G: State Technical Committees

Clean Water Act, Section 404, Title 33, Chapter 26, Subchapter IV, Section 1344

The Clean Water Act is the common name for the Federal Water Pollution Control Act Amendments of 1972. The Act was further amended in 1977, 1981, and 1987.

Transportation implications

State and local agencies are required to comply with the requirements of this Act when constructing transportation projects, typically those involving grading, widening, structures, and stream modification. Any proposed improvement that includes right-of-way acquisition and that may impact aquatic resources should be reviewed for Section 404 compliance. In Iowa, two agencies are responsible for administering the permit programs, the U.S. Army Corps of Engineers (COE) and the Iowa Department of Natural Resources (DNR). Assistance and advice should be

sought from the COE, the DNR, the Iowa Department of Transportation, and/or NRCS.

Overview

This Act describes the permitting process required for the dredging or discharge of fill materials into navigable waters of the United States. General permits are described and certain activities are exempted. States are allowed to develop and administer individual and general permit programs. Additional information can be found in the following regulations:

- 33 CFR 320 to 330 – Corps of Engineers' regulations specifying the procedures and criteria for the issuance of section 404 permits.
- 40 CFR 22 – EPA regulations that outline options available to the agencies to enforce the provisions of section 404.
- 40 CFR 230 – EPA guidelines that constitute the substantive environmental criteria used in evaluating activities regulated under section 404.
- 40 CFR 231 – Clarifies the EPA's authority to restrict or prohibit the use of an area for discharge of dredged or fill material if the discharge will have unacceptable adverse effects.
- 40 CFR 232 – Program definitions and permit exemptions.
- 40 CFR 232.2 – "Tulloch Rule" – In an effort by the EPA and the Corps of Engineers to improve protection of wetlands and increase fairness, this action closed a previous loophole, clarifying that small discharges of dredged or fill material that destroy or degrade wetland do require a permit.
- 40 CFR 233 – Specifies the procedures and criteria used by the EPA in assessing state assumption of section 404 programs.
- 40 CFR 233.60 to 233.62 – Tribal assumption regulation.

Additional information

This section of the US Code is online:

www4.law.cornell.edu/uscode/33/1344.html.

See also the article on stormwater management in this manual.