DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3640

REPLY TO
ATTENTION OF:

OCTOBER 1 4 2011

PUBLIC NOTICE
Savannah District
US Army Corps of Engineers

SUBJECT: Release of "Frequently Asked Farm Pond Questions (Q) & Answers (A)" dated October 11, 2011

The Savannah District announces the release of "Frequently Asked Farm Pond Questions (Q) & Answers (A)". Activities for the purpose of maintaining existing farm ponds and construction of new farm ponds are exempt from jurisdiction under Section 404 of Clean Water Act (CWA) provided they meet the criteria outlined in Section 404(f) of the CWA and Section 323.4(a)(3), Title 33 of the Code of Federal Regulations. The Natural Resources Conservation Service and US Army Corps of Engineers will follow procedures outlined in the "Georgia Farm Pond Exemption Guide" when reviewing proposals for farm ponds; the guide is on the Savannah District Regulatory Website at http://www.sas.usace.army.mil/regulatory/Exemptions.html. The attached document contains a list of and answers to the most frequently asked questions received during past reviews.

Please direct any questions or comments regarding this process to Mr. Terry Kobs at (229) 430-8567.

Enclosure: "Frequently Asked Farm Pond Questions (Q) & Answers (A)"

Frequently Asked
Farm Pond Questions (Q) & Answers (A)

As discussed in the "Georgia Farm Pond Exemption Guide", a farm pond is an impounded water source created by constructing an embankment or excavating a pit that is intended to provide water for the irrigation of crops or water supply for livestock operations. Activities for the purpose of maintaining existing farm ponds and construction of new farm ponds are exempt from jurisdiction under Section 404 of Clean Water Act (CWA) provided they meet the criteria outlined in Section 404(f) of the CWA and Section 323.4(a)(3), Title 33 of the Code of Federal Regulations. The Natural Resources Conservation Service (NRCS) and US Army Corps of Engineers (USACE) will follow procedures outlined in the "Georgia Farm Pond Exemption Guide" when reviewing proposal for construction of farm ponds. The following are answers to frequently asked farm pond questions, and additional information is available on the Savannah District Regulatory Website. http://www.sas.usace.army.mil/regulatory/Exemptions.html

Q. Can a farm pond be used for watering livestock (cows, horses, goats, etc.)?

A. Yes. However, as discussed in the "Georgia Farm Pond Exemption Guide," 50 head of beef cattle would only need a ¾ acre pond for a reliable source of drinking water.

Q. Can a farm pond, either existing or proposed, be used for commercial fish production?

A. No. The purpose of a farm pond is to provide a reliable source of supplemental irrigation water necessary for the production of a commodity crop during periods of drought or during the critical growth period(s) of a particular crop. Since fish are not considered a commodity crop, a farm pond cannot be used for commercial fish production. The "Georgia Farm Pond Exemption Guide" contains a partial list of commodity crops.

Q. Can a farm pond be used for recreational fishing?

A. Yes. A farm pond can be used for recreational fishing, but neither recreational nor commercial fishing can be a purpose for the construction of a farm pond.

Q. For new farming operations, can a farm pond be built to provide irrigation water for land that has not yet been cleared of trees and other vegetation, but where a commodity crop would be planted in the future?

A. Yes. A farm pond can be built in advance of clearing land for planting a commodity crop.

Q. If a farm pond is constructed in advance of clearing farm land, is there a time-frame for when the land must be cleared and be available for the production of crops?

A. Yes. Within 18 months of completing construction of the farm pond, the land must be cleared and available for crop production. The USACE routinely inspects farm ponds. Inspections are preformed to confirm that farm ponds are being used for irrigation of a commodity crop, which requires land to be cleared and available for crop production. If a farm pond is not being used for irrigation the USACE will open an investigation of unauthorized activity pursuant to Section 404 of the Clean Water Act (CWA). The USACE may require the farmer to remove the pond and restore aquatic areas to their original condition, or to submit an application for an after the fact permit. However, an after the fact permit application does not ensure that a CWA permit will be automatically issued if the discharges are determined to cause significant degradation of on-site or downstream aquatic resources.

Q. Once a farm pond has been constructed, is there a time frame for when irrigation equipment must be available?

A. Yes. Within 18 months of completing construction of a farm pond, the irrigation equipment needed to apply water from the pond must be available for use. The USACE routinely inspects farm ponds. Inspections are performed to confirm that farm ponds are being used for irrigation of a commodity crop, which requires the availability of irrigation equipment. If a farm pond is not being used for irrigation the USACE will open an investigation of unauthorized activity pursuant to the CWA. The USACE may require the farmer to remove the pond and restore aquatic areas to their original condition, or to submit an application for an after the fact permit. However, an after the fact permit application does not ensure that a CWA permit will be automatically issued if the discharges are determined to cause significant degradation of on-site or downstream aquatic resources.

Q. Can two or more farmers build a farm pond to provide irrigation water for crop lands located on adjoining or nearby farms?

A. Proposals for construction of multiple user farm ponds will be reviewed by the USACE on a case-by-case basis. For multi-farm pond proposals, all agricultural lands that would be irrigated from the pond must be identified. A proposal for a multi-farm pond must include information to document water needs (water budget), all other available water sources and the availability of irrigation equipment that would be required to pump water from the pond to all identified fields.

Q. The NRCS reviews proposals for most farm ponds that are 10 acres or less in size. The information required by NRCS is listed in the "Farm Pond Guide." Are there additional information requirements for ponds larger than 10 acres?

A. Yes. You will need to provide the information listed in the "Checklist for USACE Farm Pond Exemption Determination for Ponds over 10 Acres in Georgia." A more detailed water budget, to include, but not limited to the following information is required: a discussion of how much rainfall would be expected during drought conditions vs. how much water would need to be provided by the proposed farm pond; estimated evaporation losses and how this would impact water availability from the pond; whether the pond would be groundwater or stream fed, and how this would affect water availability and/or refilling of the pond while being used for irrigation; a watershed analysis documenting that the proposed pond would be capable of

providing irrigation water during drought conditions; and other project specific information documenting that the proposed pond not be excessive for the need. The detailed water budget information would need to be prepared by a professional hydrologist or other qualified persons.

Q. Can houses be constructed in the vicinity of a farm pond?

A. It depends. A farmer could build a house in the vicinity of a farm pond; however, if a farmer subdivides the property surrounding a farm pond into residential lots, this would be considered a change in the use of the pond under the CWA. Therefore, the pond would no longer be exempt from CWA permit requirements and would be subject to the jurisdiction of the USACE. The USACE may require the farmer to remove the pond and restore aquatic areas to their original condition, or to submit an application for an after the fact permit, which could include a requirement to provide compensatory mitigation. However, an after the fact permit application does not ensure that a CWA permit would be issued if the discharges are determined to cause significant degradation of on-site or downstream aquatic resources. Farm ponds constructed prior to implementation of the CWA are grandfathered and authorized under the CWA.

Q. What about a farm, with an existing farm pond, which is sold to a developer for the purpose of constructing a residential or commercial subdivision; would this be considered a change in use of the exempt farm pond?

A. Yes. The conversion of a farm to a residential or commercial subdivision would be a change in use. Any farm ponds constructed after implementation of the CWA are subject to USACE jurisdiction. The USACE may require the developer to remove the pond and restore aquatic areas to their original condition or to submit an application for an after the fact permit, which could include a requirement to provide compensatory mitigation. However, an after the fact permit application would not ensure that a CWA permit would be issued if the discharges are determined to cause significant degradation of on-site or downstream aquatic resources.