



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
1104 NORTH WESTOVER BOULEVARD, UNIT 9
ALBANY, GEORGIA 31707

August 13, 2019

Regulatory Division

PUBLIC NOTICE
Issuance of Savannah District Farm Pond Guide

The US Army Corps of Engineers, Savannah District, by means of this notice announces the issuance of guidance to assist producers, agencies, and the public with determining possible exemption from permitting requirements for activities regulated by the U.S. Army Corps of Engineers related to the construction and/or maintenance of a farm pond located in a stream, wetland, or other water of the United States.

If you have any further questions concerning this matter, please contact Mr. Terry C. Kobs, Project Manager, Coastal Branch at 229-430-8567.

Enclosure

1. Savannah District, Regulatory Division Farm Pond Guide



**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604**

August 5, 2019

FARM POND GUIDE

1. Purpose. This guidance is provided to assist producers, Agencies, and the public with determining possible exemption from permitting requirements for activities regulated by the U.S Army Corps of Engineers (Corps) related to the construction and/or maintenance of a farm pond located in a stream, wetland, or other water of the United States (waters). Although, the Clean Water Act (CWA) gives the Corps responsibility for regulating the placement (discharge) of dredged or fill material in waters, there are, however, exemptions from CWA permit requirements, as discussed further below.
2. Farm Pond Exemption Verification Request. The CWA specifically states that construction or maintenance of farm or stock ponds is not prohibited (i.e., does not require a permit from the Corps). Therefore, a producer is not required, under the law, to request confirmation of an exemption from the Corps. However, a producer may voluntarily request verification from the Corps that maintenance or construction of a farm pond in waters of the U.S. is exempt from the CWA (i.e., no permit required). Such requests must be complete, and include all information outlined in Appendix A.
3. Farm Pond Size. A farm pond shall not be larger than required to provide the calculated volume of water (water budget) needed by a producer for a farm or ranch operation involving agricultural or livestock production. See Appendix B for the approved method for calculating an annual water budget. See Appendix C for the approved method for calculating the annual volume of water (reliable yield) that a farm pond would provide. Larger farm Ponds (e.g., over 20 acres) may be referred to the U.S. Environmental Protection Agency for a determination of exemption from CWA permit requirements.
4. Exempt and Non-Exempt Activities. The placement of fill material in streams, wetlands or other waters of the U.S. associated with the construction or maintenance of an exempt farm pond is limited to the area required for dam or berm construction. Mechanized land clearing (i.e., tree and stump removal), in waters associated with the construction or maintenance of an exempt farm pond, is limited to the area required for dam or berm construction, auxiliary spillway entry and exit sections, and the area of the normal pool of the farm pond. The placement of fill material into waters of the U.S. that are located adjacent to a farm pond, for any purpose other than the construction or maintenance of a farm pond, is not considered exempt from CWA permit requirements.
5. For the purposes of this guidance the following terms are defined:
 - Farm Pond - A water source created by constructing a dam or excavating a pit in a stream, wetland or other water of the U.S., which is to be used by a producer for agricultural or livestock production.

- Producer - For the purpose of this guidance, a producer is defined as an entity involved with an ongoing farming, ranching, and/or silvicultural operation (e.g., an individual or company that grows agricultural crops or breeds livestock for the purpose of selling food or fiber).
- Agricultural Production - A farm or ranch operation involving the production of crops including but not limited to the following: grains; row crops; vegetables; fruits; hay, forage, or pasture; field-grown ornamentals (not containerized); flowers; bulbs; naval stores; orchards; vineyards; seed crops; plant materials; tobacco; trees; and turf farms.
- Livestock Production - A farm or ranch operation involving the production, growing, raising, or reproducing of livestock or livestock products, including but not limited to the following: beef cattle; dairy cattle; buffalo; horses; ostriches; emu; poultry; turkeys; sheep; goats; and swine.
- Water Budget - The volume of water that a producer requires for agricultural or livestock production on a farm or ranch operation.
- Reliable Yield - The volume of water that a farm pond would provide for agricultural or livestock production on a farm or ranch operation.
- Recreational and Commercial Ponds - Ponds constructed in streams, wetlands, or other waters, for purposes other than a water source for agricultural or livestock production. [NOTE: Information concerning pond permits (e.g., Regional Permit 90) is available on the Savannah District webpage at <https://www.sas.usace.army.mil/Missions/Regulatory.aspx>.

6. Frequently Asked Questions and Answers. For answers to frequently asked questions concerning exempt farm ponds, see Appendix D.

7. General Questions. For general questions concerning farm pond exemptions in the State of Georgia please contact the appropriate Corps' Office that services the county where the pond will be located via telephone number provided in Appendix E.

8. Requesting a Farm Pond Exemption Verification. In the event a written verification is requested, or needed, digital submittals are preferred. Information on how to submit a request for verification of exemption is available at <https://www.sas.usace.army.mil/Missions/Regulatory/Electronic-Submittal-of-Applications/>. Requests for farm pond exemption verifications can also be mailed to the appropriate Corps' office. See Appendix E for a list of mailing addresses, phone numbers, electronic mailboxes, and the office location that services your County.

FARM POND EXEMPTION VERIFICATION REQUEST CHECKLIST

1. ___ A completed and signed Farm Pond Exemption Verification Request.
2. ___ Property owner's full name, mailing address and daytime telephone number. Include the name of a contact person if the owner is a company or other organization.
3. ___ If the property owner is not the producer, the producer's full name, mailing address, day time telephone number and relationship to the owner.
4. ___ The latitude/longitude coordinates for the pond location in decimal degrees.
5. ___ Vicinity and location maps showing the pond site and the property boundary where water from the pond will be used for agricultural or livestock production. Excerpts of U.S. Geological Survey topographical quadrangle maps, county road maps, or other similar maps may be used. Vicinity maps must be scaled appropriately to locate the site by nearby landmarks and geo-referenced to include north arrow.
6. ___ For crop irrigation, state the method of irrigation, and provide an aerial photograph identifying areas to be irrigated.
7. ___ For livestock water, state the number of and type of livestock, and provide an aerial photograph identifying areas where livestock will be located.
8. ___ A written statement which documents all other water sources considered and provides justification as to why those sources are inadequate.
9. ___ Completed Appendix B, with the calculated water budget for agriculture or livestock production area(s).
10. ___ Completed Appendix C, with the calculated reliable yield for the farm pond.
11. ___ The estimated date to begin pond construction and the date of completion.

ESTIMATED WATER BUDGET OR NEED

CROP OR USE	PER ACRE ANNUAL ACRE/FEET WATER NEED
Row Crops	1.5
Tobacco	1.0
Hay, Forage, Pasture	1.25
Vegetables	1.25
Orchards	1.5

LIVESTOCK PRODUCTION	WATER NEEDS Gallon/head/day
Dairy Cattle	25
Beef Cattle	12
Sheep and Goats	1
Horses	10

Example: A producer irrigates 500 acres of cotton. What pond storage volume is defensible?

Crop Acreage	500 acres
Water Needs	1.5 ac-ft/ac
Total Water Needs	750 ac-ft

FARM POND RELIABLE YIELD CALCULATIONS

For farm ponds the volume of reliable irrigation water is calculated by multiplying the surface area of the proposed pond by the depth of the pond at the dam. This volume is then multiplied by a factor of 0.4 to arrive at the approximate reliable yield of the pond.

Pond Surface Area x Maximum Depth of Pond at Dam x 0.4 = Reliable Yield

Frequently Asked Farm Pond Questions & Answers

1. Can an exempt farm pond be constructed for the purpose of watering livestock (cows, horses, goats, etc.)?

Answer. Yes. However, 50 head of beef cattle would only need a $\frac{3}{4}$ acre pond for a reliable source of drinking water.

2. Can an exempt farm pond, either existing or proposed, be used for commercial fish production?

Answer. No. The purpose of a farm pond is to provide a reliable source of water to be used by a producer for agricultural or livestock production. Since fish production is not considered agricultural or livestock commodity crop, an exempt farm pond cannot be used for commercial fish production.

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

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

5. 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 agricultural or livestock production will occur in the future?

Answer. Yes. A farm pond can be built in advance of clearing land for agricultural or livestock production.

6. 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 agricultural or livestock production?

Answer. Yes. Within 18 months of completing construction of an exempt farm pond, the land must be cleared and available for agricultural or livestock production. The Corps routinely inspects exempted farm ponds. Inspections are preformed to confirm that farm ponds are being used for irrigation or livestock water, which requires land to be cleared and available agricultural or livestock production. If an exempt farm pond is not being used for irrigation, such activity could be considered a violation of the Clean Water Act (CWA). The Corps may request the farmer remove the pond and restore the affected area, or submit an application for an after-the-fact permit. However, an after-the-fact permit application does not guarantee Corps authorization for the activities, especially if such activities are determined to cause significant degradation of on-site or downstream aquatic resources.

7. Once an exempt farm pond has been constructed for agricultural production, is there a time frame for when irrigation equipment must be on-site and available?

Answer. Yes. Within 18 months of completing construction of a farm pond, the irrigation equipment needed to apply water from the farm pond must be available for use. The Corps routinely inspects exempt farm ponds. Inspections are performed to confirm that exempt farm ponds are being used for irrigation, which requires the availability of irrigation equipment. If an exempt farm pond is not being used for irrigation, such activity could be considered a violation of the Clean Water Act (CWA). The Corps may request the farmer remove the pond and restore the affected area, or submit an application for an after-the-fact permit. However, an after-the-fact permit application does not guarantee Corps authorization for the activities, especially if such activities are determined to cause significant degradation of on-site or downstream aquatic resources.

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

Answer. It depends. Proposals for construction of multiple user farm ponds will be reviewed by the Corps 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), the volume of water that the proposed pond would provide (reliable yield), 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.

9. Can a non-producer (neighboring) property owner create a pond in waters, as long as the neighbor agrees to sell or otherwise provide the water to a neighboring producer for agricultural purposes?

Answer. It depends. In cases where the neighboring property owner may be considered a commercial vendor of water, with no assurance that such water would be used for agricultural purposes in perpetuity, the pond would not be considered exempt. However, an agreement between the neighboring property owner and the producer for such arrangement may be sufficient to provide assurance of the 'agricultural' purpose of the pond. Such agreements will be reviewed on a case by case basis, and must be provided with any request for exemption verification and approved prior to verification of exemption. Such agreements must be supported by receiving any and all local, State, and Federal permits. Any change in, or removal of, the agreement for agricultural use of the pond, may constitute a change in use, and subject the pond to permitting requirements.

10. Does the Natural Resources Conservation Service (NRCS) participate in the farm pond exemption verification process?

Answer. No, the NRCS does not provide information, guidance or other information to producers concerning agricultural exemptions. A producer must contact the Corps for answers to all questions concerning agricultural exemptions, or Corps' verifications of agricultural exemptions.

11. Can houses be constructed in the vicinity of an exempt farm pond?

Answer. It depends. A farmer could build a house in the vicinity of a farm pond; however, if a farmer subdivides the property surrounding an exempt 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 requirements of the CWA and would be subject to the Corps' jurisdiction. The Corps may request the farmer remove the pond and restore the affected area, or submit an application for an after-the-fact permit. However, an after-the-fact permit application does not guarantee Corps authorization for the activities, especially if such activities 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.

12. 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?

Answer. 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 Corps jurisdiction. The Corps 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. However, an after-the-fact permit application does not ensure that a CWA permit will be automatically issued if regulated activities in waters of the U.S. are determined to have caused significant degradation of on-site or downstream aquatic resources.

US ARMY CORPS OF ENGINEERS SAVANNAH DISTRICT, REGULATORY BRANCH OFFICE LOCATIONS

Submit Requests to:

Piedmont Section
1590 Adamson Parkway, Suite 200
Morrow, Georgia 30260

Coastal Section
100 W. Oglethorpe Ave
Savannah, Georgia 31401

General Questions

Piedmont – Mr. Philip Shannin
678-422-2729
Coastal – Mr. Terry Kobs
229-430-8567

