

Ditches in North Carolina

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US Army Corps of Engineers
BUILDING STRONG®

Wilmington
District

Army Corps of Engineers Standard Operating Procedures for the Regulatory Program

- The term drainage ditch is defined as a linear excavation or depression constructed for the purpose of conveying surface runoff or groundwater from one area to another.
- If a drainage ditch is constructed entirely in uplands, it is not a water of the United States unless it becomes tidal or otherwise extends the ordinary high water mark of existing Section 10 navigable waters.
- A drainage ditch excavated in uplands and/or located along a roadway, runway, or railroad that only carries water from upland areas is not considered jurisdictional.
- If a ditch is excavated in waters of the United States, including wetlands, it remains waters of the United States, even if it is highly manipulated.



33 CFR 328.3 Definitions

- For the purpose of this regulation these terms are defined as follows:
 - a) The term **waters of the United States means**
 - (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (2) All interstate waters including interstate wetlands;



33 CFR 328.3 Definitions.

- (3) All other waters such as intrastate lakes, **rivers**, streams (including intermittent streams), mudflats, sandflats, **wetlands**, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by **interstate or foreign travelers** for recreational or other purposes; or
 - (ii) From which **fish or shellfish** are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for **industrial purpose** by industries in interstate commerce;



33 CFR 328.3 Definitions.

- (4) All **impoundments of waters** otherwise defined as waters of the United States under the definition;
- **(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;**
- (6) The **territorial seas**;
- (7) **Wetlands adjacent to waters** (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.
- (8) Waters of the United States **do not include prior converted cropland**. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.



Ordinary High Water Mark Identification

- 33 CFR 328.3(e) specifically defines OHWM as the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.



Exemptions for Construction and/or Maintenance Activities

- Discharges associated with the maintenance of existing drainage ditches
- Discharges associated with the construction and maintenance of irrigation ditches
- Includes fill associated with siphons, pumps, head gates, and similar structures related to irrigation ditches
- Does not include activities that impede flow and circulation of waters of U.S or that reduce reach of waters.



33 CFR 323.4 Discharges not requiring permits

Normal **farming, silviculture**... such as... **minor drainage**, and harvesting for the **production of food, fiber, and forest products**, or upland soil and water conservation practices

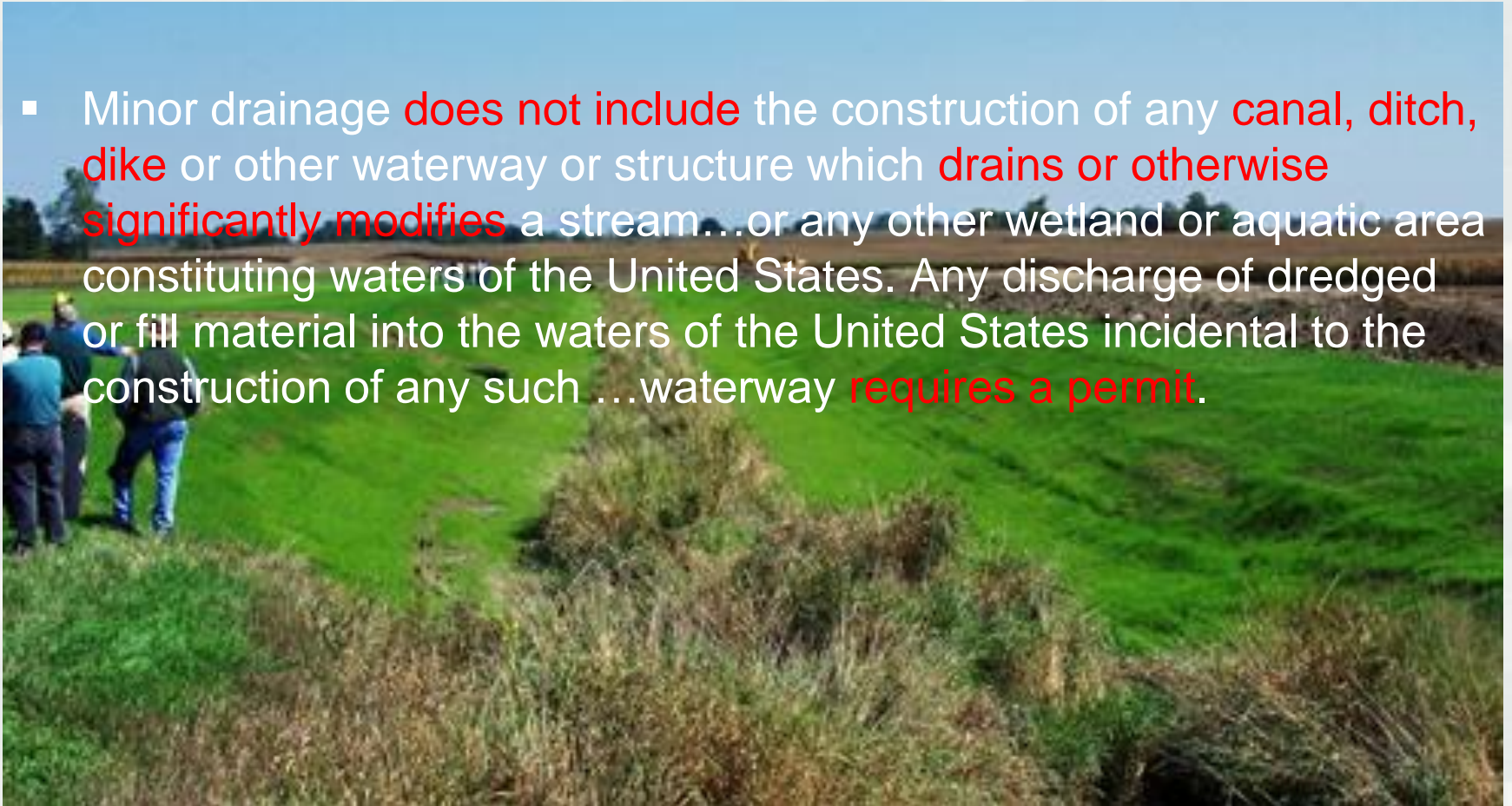
- Minor drainage includes activities **adequate to effect the removal of excess soil moisture from upland croplands**. This includes ditching activities that involve **no discharge of dredged or fill material** into waters of the United States, and as such never require a section 404 permit.
- **Minor drainage** in waters of the U.S. is limited to drainage within areas that are part of an **established farming or silviculture operation**. It does not include drainage associated with the immediate or gradual **conversion of a wetland to a non-wetland** or conversion from one wetland use to another.

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33 CFR 323.4 Discharges not requiring permits

- Minor drainage **does not include** the construction of any **canal, ditch, dike** or other waterway or structure which **drains or otherwise significantly modifies** a stream...or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such ...waterway **requires a permit.**



Silviculture Activities

- Borrow ditches must not be constructed in a manner that reduces the reach of waters of the U.S.
- Borrow ditches should not be connected to any outfall including other ditches, streams, canals, creeks or other features.
- Maintenance activities must not include expansion beyond original dimensions.





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Available Permits

- **Nationwide Permit 40** authorizes activities including construction of drainage ditches and relocation of existing serviceable ditches located in waters of U.S.
- **Nationwide Permit 41** authorizes placement of fill in non-tidal waters to modify configuration of serviceable drainage ditches for purpose of improving water quality
- **Nationwide Permit 46** authorizes the discharge of fill into non-tidal ditches that are 1) constructed in uplands 2) receive water from area that was water of U.S. prior to construction of the ditch, 3) divert water to area determined to be waters of U.S. prior to construction of the ditch and 4) are determined to be waters of U.S.
- **Standard Permits**

