



AUG 22 2014

MARYLAND TECHNICAL GUIDE
CHANGE NOTICE NO. 89

Purpose. To provide updated Maryland Waters and Wetlands Regulatory Guidance

Effective Date. Upon receipt.

Explanation:

Section I: The formerly titled “Maryland Waters and Wetlands Regulatory Field Handbook” has been revised into a guidance document. The new guidance document will be located in Section I of the eFOTG under “Regulatory Guidance,” and will be removed from its previous location on the MD NRCS Sharepoint site.

Clean Water Act Interpretive Rule (March 25, 2014). Guidance has been added regarding the EPA and USACE Interpretive Rule regarding exemptions of certain agricultural conservation practices from Section 404 and associated Section 401 water quality certification permit requirements. The Interpretive Rule identifies 56 national NRCS conservation practices that are considered “normal farming” activities under Section 404, and are therefore exempt from permitting requirements. The conservation practices were determined as such because they typically provide water quality benefits when implemented for the purposes identified in the conservation practice standard. Although the exemption is based on the national NRCS conservation practice standards, all Maryland conservation practice standards meet requirements of the national standards, and are therefore exempt.

Section 404 exemptions are self-implementing, which means that producers and landowners do not need notification, verification or documentation from the USACE or EPA for the exemption to apply. The exemptions apply to landowners and producers regardless of whether they are cooperating with NRCS. However, NRCS should not verify or conduct field visits to verify exempt activities for landowners or producers who are not cooperating or participating in USDA programs.

For all Section 404 exemptions under “normal farming” activities, the exemption does not apply if the activity would change **the use and** either impair the flow or circulation or reduce the reach of waters of the US. This provision in Section 404(f)(2) of the CWA is often referred to as the “recapture” clause. Generally, the term “change in use” is interpreted as a change to a more intensive use, and not a change that results in a more

conserving use. For example, a change from a forested wetland to an open water wetland to be planted and flooded would not be exempt.

An exemption under Section 404 is for federal CWA purposes only. Activities exempted under Section 404 may require an authorization or permit for the purposes of Maryland waters and wetlands regulations.

MD General Waterway Construction Permit Request form. The NRCS version of the MD General Waterway Construction Permit (GWCP) request form has been revised, and will also be relocated to Section I of the eFOTG under “Regulatory Guidance.” Use this form for all requests for authorization under the NRCS Regional Letters of Authorization (RLOA) for Agricultural BMPs and Wetland Restoration, Creation and Shallow Water Areas.

The new MD GWCP request form includes a check box for activities that are exempt from Section 404 permitting per the Clean Water Act Interpretive Rule (March 25, 2014). Check this box when all the involved practices that will occur within waters of the US are exempt. This will inform MDE that the application does not need to be forwarded to the U.S. Army Corps of Engineers for review.

Additional revisions to the Maryland Waters and Wetlands Regulatory Guidance include:

- The Nontidal Wetlands and Waterways Permit Guidance tables for agricultural activities (table 2) and wetland restoration, creation, and shallow water areas (table 3) have been revised to reflect the recent Clean Water Act Section 404 Interpretive Rule, which identifies 56 national NRCS conservation practices as exempt from Section 404 permitting requirements.
- General permits contained within the guidance document have been updated to reflect the most current versions.
- The “SCD Certification and MDE Concurrence for Proposed Agricultural Activities in Nontidal Wetlands” form has been converted to PDF fillable format. The form content has not changed.

Filing
Instructions.

Section I:

- File this Change Notice and the Change Notice Register (new page xxii) in the front of Section I of the Field Office Technical Guide.

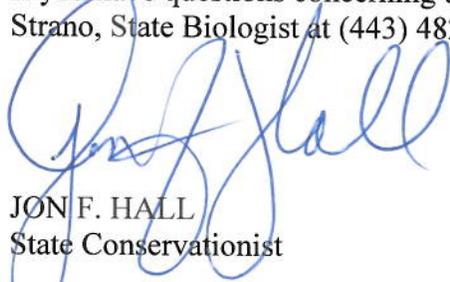
Section I: Contents of this section are distributed in electronic format (eFOTG) only. If desired, paper copies of the standards may be downloaded from the eFOTG and filed in Section IV of the FOTG binder.

- File the revised Table of Contents.
- In Section I-H - Regulatory Guidance has been added to Section I. File the following documents: Maryland Waters and Wetlands Regulatory Guidance for Permits, Authorizations and Exemptions for Agricultural Activities, Request for General Permit Authorization for Agricultural BMPs and Wetland Restoration, and SCD Certification and MDE Concurrence for Proposed Agricultural Activities in Nontidal Wetlands in Section I-H.

Distribution.

All documents may be downloaded from the MD NRCS eFOTG web page:
<http://www.nrcs.usda.gov/technical/efotg>

If you have questions concerning the Conservation Practice Standards, please contact Steve Strano, State Biologist at (443) 482-2928.



JON F. HALL
State Conservationist

Attachments

DIST: Maryland NRCS Field Offices
Maryland State Technical Committee (Change Notice only)