



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

FARM POND GUIDE
February 2024

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, Section 404 of the Clean Water Act (CWA) gives the Corps responsibility for regulating the placement (discharge) of dredged or fill material in waters, there are 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). To be considered complete for Corps review, such requests must include all information outlined in Appendix A; the Corps may request additional information as needed to complete the review.
3. Farm Pond Size. A farm pond shall not be larger than required to provide the calculated volume of the 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. Farm pond requests, such as those for larger ponds, may be referred to the U.S. Environmental Protection Agency for their review and confirmation that the proposed farm pond is exempt from the permit requirements of the CWA.
4. Exempt and Non-Exempt Activities. The placement of fill material in streams, wetlands or other waters of the United States 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/exit sections and the area of the normal pool of the farm pond. The placement of fill material into waters of the United States 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: 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: 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 of the U.S., 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 <http://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 at <https://www.sas.usace.army.mil/Missions/Regulatory/Electronic-Submittal-of-Applications/?>.

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/>. An example Farm Pond Exemption Determination letter is attached as Appendix E.

9. Do not rely on out-of-date versions of this Guide as they may be obsolete. Do not rely on versions of this Guide or any related guidance found on the websites other than the official US Army Corps of Engineers, Savannah District website. Please contact the appropriate Savannah District office listed below should you have questions or wish to consult regarding any of the procedures involved in the process.

APPENDIX A
FARM POND EXEMPTION VERIFICATION REQUEST CHECKLIST

1. ___ A completed and signed Appendix A, 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.
6. ___ For crop irrigation, state the method of irrigation, and provide an aerial photograph identifying areas to include acreages to be irrigated. The aerial must include the total pool area (acres), the acres of wetlands and/or linear feet of stream channel that will be filled for the footprint of the dam, and the acres of wetlands and/or linear feet of stream channel that will be flooded for the pool elevation.
7. ___ For livestock water, state the number of and type of livestock, and provide an aerial photograph identifying areas to include acreages where livestock will be located. The aerial must include the total pool area (acres), the acres of wetlands and/or linear feet of stream channel that will be filled for the footprint of the dam, and the acres of wetlands and/or linear feet of stream channel that will be flooded for the pool elevation.
8. ___ Copy of irrigation design/plan (if available).
9. ___ Written documentation of other potential water sources (e.g. groundwater well, surface water (stream) withdrawal with upland storage reservoir, etc.) and discussion of why those sources are impracticable (costs, technology, logistics, etc.).
10. ___ Completed Appendix B with the calculated water budget for agriculture or livestock production area(s).
11. ___ Completed Appendix C with the calculated reliable yield for the farm pond.
12. ___ The estimated date to begin and complete pond construction and the builder's experience level in constructing impoundments.

**U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
FARM POND EXEMPTION VERIFICATION REQUEST INFORMATION**

PRODUCER INFORMATION:

Name: _____ Company: _____

Phone Number _____ E-Mail _____

Address _____ City _____ State _____ Zip Code _____

AGENT/CONSULTANT INFORMATION:

Name: _____ Company: _____

Phone Number _____ E-Mail _____

Address _____ City _____ State _____ Zip Code _____

FARM INFORMATION:

Address _____ City _____ State _____ Zip Code _____

County: _____ Pond Latitude/Longitude (Degree) _____

Description of Farming Operation (e.g., new or existing farm, any USDA farm number, etc.):

FARM POND INFORMATION:

Pond Size (acres at normal pool): _____ Dam Height: _____ Water Depth at Dam: _____

Crop Type(s): _____ Acres: _____

Livestock Type(s): _____ Herd Size: _____

Calculated Appendix B Water Budget (acre feet): _____

Calculated Appendix C Reliable Yield (acre feet): _____

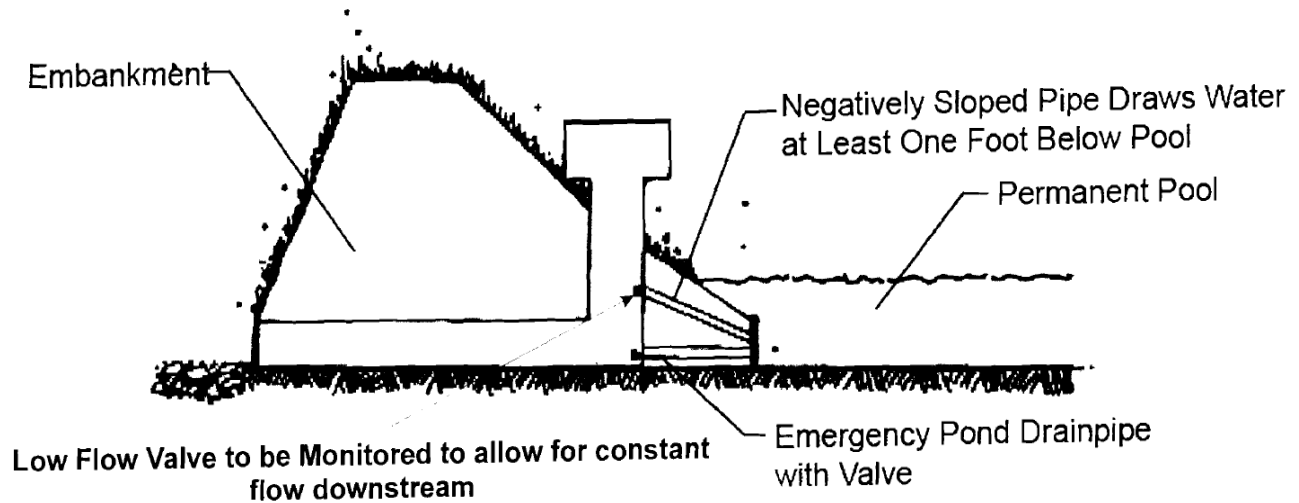
PRODUCER CERTIFICATION: I certify that the above information is accurate. I understand that this exemption does **NOT** free me from obtaining any other federal, state, or local permits for construction of the proposed pond. I understand that if any revisions are made to the project or its intended use, this exemption verification may be invalidated. Should it be determined that the pond has been converted to a non-agricultural use at any point, I may be required to obtain a Department of the Army (DOA) permit in order to maintain the pond. Any DOA permit application must include an alternatives analysis and

mitigation, and should a permit not be issued, restoration of the site may be required.

I wish to pursue confirmation from the Corps that the activity I propose is exempt from DOA permitting subject to Section 404 of the Clean Water Act, 33CFR, Part 323.4 (3) which states that construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

Furthermore, I understand that in order to qualify for the exemption, a low flow orifice as shown below may need to be installed on the principal spillway pipe in order to maintain downstream flow during the filling of the pond and during dry weather conditions.

Type or Print Name _____ Signature _____ Date _____



APPENDIX B
INTERIM - DRAFT
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

APPENDIX C
INTERIM - DRAFT
FARM POND RELIABLE YEILD CALCULATIONS

1. Excavated farm ponds are typically less than 3 acres in surface area. The acre feet of reliable irrigation water provided by an excavated pond can be calculated by simply multiplying surface area of the pond by average depth of the pond.

$$\text{Pond Surface Area} \times \text{Average Pond Depth} = \text{Reliable Yield}$$

2. For farm ponds with a dam constructed on an intermittent or perennial stream, 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.

$$\text{Pond Surface Area} \times \text{Maximum Depth of Pond at Dam} \times 0.4 = \text{Reliable Yield}$$

APPENDIX D
Frequently Asked
Farm Pond Questions & Answers

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

Answer. Yes. However, 50 head of beef cattle would only need an approximately $\frac{3}{4}$ 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.

3. 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.

4. 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.

5. 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. A farm pond must serve an agricultural need to meet the exemption. Often legitimate farm ponds will be constructed after or concurrently with the agricultural need they meet. Should a pond be constructed prior to the agricultural need, the designated crops or livestock must be present with proper equipment in place to use that water for the stated purpose within a reasonable period of time. The U.S. Army Corps of Engineers and/or U.S. Environmental Protection Agency may inspect the site to verify that the pond has been constructed as proposed, that the cropland [or livestock operation] has been established, and that any associated irrigation equipment is available for use. If the pond is found to be for a use other than producing crops [or livestock], it may no longer qualify for an exemption, and you may be asked to remove the pond and restore the affected area or obtain a Department of the Army permit. Any

Department of the Army permit application would likely need to include an alternatives analysis and mitigation. Should a permit not be obtained, it may be necessary to restore the site to pre-construction conditions and mitigate for any temporal loss of aquatic functions fully at the landowner's expense.

6. 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. No, but extensive delays in the time between pond completion and the irrigation equipment installation may result in further investigation by the Corps or USEPA and require corrective measures. Also see question and answer number 5.

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

Answer. 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.

8. 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.

9. 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 producers must contact the Corps for answers to all questions concerning agricultural exemptions, or Corps' verifications of agricultural exemptions.

10. 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 CWA permit requirements and would be subject to the jurisdiction of the Corps. The Corps 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 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.

11. 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.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
[INSERT OFFICE LOCATION]

[Insert Date]

Regulatory Division
SAS-[Insert file #]

[Requestor Address]

Dear [Requestor]:

I refer to a letter received in our office regarding your proposal to construct a XXX-acre irrigation pond to provide water for xxx-acres of [insert crop type(s)] or xxx head of [insert animal type]. The project site is located at [insert location] County, Georgia (latitude: XX.XXXX; longitude: -XX.XXXX). This project has been assigned number SAS-[Insert file #], and it is important that you refer to this number in all communication concerning this matter.

It is our understanding that the existing water stored on site is inadequate to meet the irrigation needs of the crop [or livestock]. [Describe other water sources considered and reason(s) eliminated: Direct surface water withdrawal, upland dug pond, well installation, etc.]. The existing water on the site consists of an unnamed tributary to [insert name Creek], [sample justification: which offers inconsistent flow throughout the year making pumping from the stream impractical]. According to the information furnished, the proposed pond would provide XX.XX acre-feet of storage at normal pool for irrigation; the prepared water budget confirmed the volume of water needed to provide water for XXX-acres of [insert crop type(s)] is YY.YY acre-feet. Therefore, the water need is equal to or greater than the storage capacity of the proposed pond ($XX.XX \leq YY.YY$). [If pond is for livestock, state pond yield in gallons/head/day]

Your stated plan is to supply water for [crop type]. Please be advised that within a reasonable period of time after completing construction of the farm pond, the designated crops or livestock must be present, with proper equipment in place to use that water for the above stated purpose. The U.S. Army Corps of Engineers and/or U.S. Environmental Protection Agency may inspect the site to verify that the pond has been constructed as proposed, that the cropland [or livestock operation] has been established, and that any associated irrigation equipment is available for use. If the pond is found to be for a use other than producing crops [or livestock], it may no longer qualify for an exemption, and you may be asked to remove the pond and restore the affected area or obtain a Department of the Army permit as described below. [If pond is for livestock, state specifics for that purpose].

This agriculture exemption [specify irrigation or stock pond construction] is valid only if construction of the pond is accomplished in accordance with the following criteria:

- a. The size of the pond and the resulting storage capacity must not exceed the water need calculated in the above referenced water budget.
- b. Adverse effects to the aquatic system due to accelerating or restricting the passage of water must be minimized to the maximum extent practicable and the outfall should be constructed in such a way that normal pre-construction flows are maintained even during periods of dry weather.
- c. In wetlands or streams, mechanized land clearing (stump removal) must be limited to the area necessary for construction of the normal pool of the pond, the associated dam and/or berm, and an auxiliary spillway entry and exit section, if required.
- d. In wetlands or streams, the placement of dredged or fill material is limited to that necessary for dam, berm and/or spillway construction. No dredged or fill material shall be placed in wetlands or streams to build up areas around the pond.
- e. You must obtain a stream buffer variance, if required. Variances are issued by the Director of the Georgia Environmental Protection Division, as defined in the Georgia Erosion and Sedimentation Control Act of 1975, as amended.

The Corps' response is based solely on the information you, the producer/applicant, provided to us and as you certified in your application as true and accurate. In the event you contemplate changes to this project, I recommend that those changes be coordinated with us prior to proceeding with any additional work. If any of the information in your application is found to be falsified in any manner, you make any revisions to the proposed project or its intended use, or if the pond is converted to a non-agricultural use after construction, this verification may be invalid and you may no longer qualify for an exemption under 33 C.F.R. § 323.4(a)(3). In such an event you may be required to obtain a permit pursuant to Section 404 of the Clean Water Act and 33 C.F.R. § 323.3. Any Department of the Army permit application would likely need to include an alternatives analysis and mitigation. Should a permit not be obtained, it may be necessary to restore the site to pre-construction conditions and mitigate for any temporal loss of aquatic functions at the landowner's expense.

This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs,

you should contact the local office of the NRCS prior to starting work and confirm that construction of the farm pond will not negatively impact USDA farm program benefits.

This letter does not convey any property rights, in either real estate or material, or any exclusive privileges. It does not authorize any injury to property, invasion of rights, or any infringement of federal, state, or local laws or regulations. It does not obviate the requirement to obtain state or local assent required by law, including the Georgia Erosion and Sedimentation Control Act of 1975, as amended. It does not affect your liability for any damages that may be caused by the work, nor does it affect your liability for any interference with any existing or proposed federal project.

A copy of this letter is being provided via email to: [Insert copy furnished info]

Thank you in advance for completing our on-line Customer Survey Form located at <https://regulatory.ops.usace.army.mil/customer-service-survey/>. We value your comments and appreciate you taking the time to complete a survey each time you interact with our office.

If you have any questions, please call [Insert PM contact info].

Sincerely,

[PM Signature]