

## ERRATUM

**The last paragraph on page 3 of following public notice titled “REGULATORY JURISDICTION SILVICULTURAL ACTIVITIES NEW ORLEANS DISTRICT” has been modified to correct a typographical error.**

May 6, 2005



April 5, 2005

## **SPECIAL PUBLIC NOTICE**

### **REGULATORY JURISDICTION SILVICULTURAL ACTIVITIES NEW ORLEANS DISTRICT**

Over the past several years, the U.S. Army Corps of Engineers (Corps), New Orleans District (District), has received numerous inquiries concerning the need to obtain Department of the Army (DA) permits prior to logging or conducting other silvicultural practices in wetlands. As a result, the District has participated in several meetings and discussions with various property owners, loggers, industry representatives, state officials, and other federal agencies regarding the Corps' regulatory authority pursuant to the Clean Water Act (CWA) and the Rivers and Harbors Act of 1899 (RHA).

The purpose of this Special Public Notice is to provide information regarding the recapture provisions of the CWA that could result in the need to obtain DA permits under Section 404 of the CWA and to advise of the need to obtain DA permits under Section 10 of the RHA for silvicultural activities that could affect the course, location, condition, or capacity of a navigable water.

#### CLEAN WATER ACT:

Section 404 of the CWA established a program to regulate discharges of dredged or fill material into waters of the United States, including wetlands. Specifically, DA permits are required prior to the deposition or redistribution of dredged or fill material into jurisdictional waters, unless the activity is identified as exempt.

Timbering in and of itself is not an exempt activity. However, timbering activities that are part of an established (i.e., ongoing) silvicultural operation do fall within the purview of the exemption as specified in 33 CFR 323.4 (a) (1) of the Corps' regulations. This exemption is not applicable to activities that: bring an area into silviculture; result in a direct or gradual conversion of wetlands to a use which they did not previously serve (e.g., pasture, agriculture, residential or commercial development, etc.), where the flow or circulation of waters of the United States may be impaired or their reach reduced (see 33 CFR 323.4 (c)). If the exemption is not applicable, a DA permit will be required if there is a discharge, including redistribution, of fill material into waters of the United States.

The determination of whether a specific logging activity is exempt is made on a case-by-case basis. Permitting requirements and/or exemptions for timbering cypress/tupelo swamps in coastal Louisiana are currently being determined and addressed by the Environmental Protection Agency, also on a case-by-case basis, after taking into consideration information specific to each proposed logging operation.

RIVERS AND HARBORS ACT OF 1899:

Section 10 of the RHA prohibits the obstruction or alteration of any navigable water of the United States, unless a DA permit has been issued by the Corps. The Corps implementing regulations for Section 10 are found at 33 CFR part 322. A DA permit is required for the construction of any structure in, over, or under navigable waters, the excavation of material from navigable waters, the deposition of material into navigable waters, or any other work that affects the course, location, condition, or capacity of navigable waters.

Navigable waters of the United States are defined at 33 CFR 329.4 as: "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." In tidal waters, the shoreward limit of navigable waters extends to the line on the shore reached by the plane of the mean high water (see 33 CFR 329.12(a)(2)). In bays and estuaries, Section 10 jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action (see 33 CFR 329.12(b)). In rivers and lakes, Section 10 jurisdiction extends laterally over the entire water surface and bed of a navigable waterbody, including all land and waters below the ordinary high water mark (OHWM), even though such waters may be extremely shallow or obstructed by shoals or vegetation (see 33 CFR 329.11(a)). Therefore, Section 10 jurisdiction extends to marshes and forested wetlands that are channelward of the mean high water line or OHWM.

Unlike the CWA, there are no exemptions under Section 10, for regulated work within navigable waters of the United States. Examples of work associated with silvicultural activities that require Section 10 permits if they occur within navigable waters include: deposition or redistribution of fill material associated with logging roads, stream crossings, and staging areas; construction or placement of structures such as timber mats and loading/offloading ramps; stockpiling of timber; and excavating or any other work that has the effect of dredging or substantially increasing soil erosion/sedimentation within the navigable water.

The first step in pursuing a DA permit is to obtain an approved jurisdictional determination (JD). If you anticipate logging an area that may be navigable, we suggest you request a JD that identifies the limits of Corps' RHA authority. We are prepared to process any such requests in a timely manner and provide a written response. Please direct correspondence to CEMVN-OD-SS, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, LA 70160-0267.

Individuals and companies involved in timbering operations located within the Louisiana Coastal Zone may also need a Coastal Use Permit before commencing work. While the Louisiana Coastal Resources Program typically provides an exemption from permitting for forestry activities on lands consistently used in the past for such activities (La. R.S. 49:214.34.A.3), this exemption does NOT apply to those components of proposed timbering operations which require a permit from the Corps (Louisiana Administrative Code, Title 43, Part I, Chapter 7, Section 723.B. 7.a.ii).

Information presented in this Special Public Notice is for clarification purposes only and does not represent a change in policy or regulations. Referenced Corps regulations under 33 CFR 320-331 may be viewed at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/sadmin3.htm>. Similarly, Louisiana Coastal Resources Program regulations may be viewed at <http://dnr.louisiana.gov/crm/coastmgt/cup/cup.asp>.