

saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming).

In addition, 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, lake, swamp, bog 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 structure or waterway requires a permit.

(4) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing, as described above, will never involve a discharge of dredged or fill material.

(5) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(e) Federal projects which qualify under the criteria contained in section 404(r) of the Act are exempt from section 404 permit requirements, but may be subject to other State or Federal requirements.

## PART 233—404 STATE PROGRAM REGULATIONS

### Subpart A—General

Sec.

233.1 Purpose and scope.

233.2 Definitions.  
233.3 Confidentiality of information.  
233.4 Conflict of interest.

### Subpart B—Program Approval

233.10 Elements of a program submission.  
233.11 Program description.  
233.12 Attorney General's statement.  
233.13 Memorandum of Agreement with Regional Administrator.  
233.14 Memorandum of Agreement with the Secretary.  
233.15 Procedures for approving State programs.  
233.16 Procedures for revision of State programs.

### Subpart C—Permit Requirements

233.20 Prohibitions.  
233.21 General permits.  
233.22 Emergency permits.  
233.23 Permit conditions.

### Subpart D—Program Operation

233.30 Application for a permit.  
233.31 Coordination requirements.  
233.32 Public notice.  
233.33 Public hearing.  
233.34 Making a decision on the permit application.  
233.35 Issuance and effective date of permit.  
233.36 Modification, suspension or revocation of permits.  
233.37 Signatures on permit applications and reports.  
233.38 Continuation of expiring permits.

### Subpart E—Compliance Evaluation and Enforcement

233.40 Requirements for compliance evaluation programs.  
233.41 Requirements for enforcement authority.

### Subpart F—Federal Oversight

233.50 Review of and objection to State permits.  
233.51 Waiver of review.  
233.52 Program reporting.  
233.53 Withdrawal of program approval.

### Subpart G—Eligible Indian Tribes

233.60 Requirements for eligibility.  
233.61 Determination of Tribal eligibility.  
233.62 Procedures for processing an Indian Tribe's application.

### Subpart H—Approved State Programs

233.70 Michigan.  
233.71 New Jersey.

AUTHORITY: 33 U.S.C. 1251 *et seq.*

## Environmental Protection Agency

## § 233.2

SOURCE: 53 FR 20776, June 1, 1988, unless otherwise noted.

### Subpart A—General

#### § 233.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow, and the criteria EPA will apply, in approving, reviewing, and withdrawing approval of State programs under section 404 of the Act.

(b) Except as provided in § 232.3, a State program must regulate all discharges of dredged or fill material into waters regulated by the State under section 404(g)-(1). Partial State programs are not approvable under section 404. A State's decision not to assume existing Corps' general permits does not constitute a partial program. The discharges previously authorized by general permit will be regulated by State individual permits. However, in many cases, States other than Indian Tribes will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State which is not an Indian Tribe to regulate activities on Indian lands does not constitute a partial program. The Secretary of the Army acting through the Corps of Engineers will continue to administer the program on Indian lands if a State which is not an Indian Tribe does not seek and have authority to regulate activities on Indian lands.

(c) Nothing in this part precludes a State from adopting or enforcing requirements which are more stringent or from operating a program with greater scope, than required under this part. Where an approved State program has a greater scope than required by Federal law, the additional coverage is not part of the Federally approved program and is not subject to Federal oversight or enforcement.

NOTE: State assumption of the section 404 program is limited to certain waters, as provided in section 404(g)(1). The Federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill material into those waters over which the Secretary retains section 404 jurisdiction.

(d) Any approved State Program shall, at all times, be conducted in accordance with the requirements of the Act and of this part. While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose.

[53 FR 20776, June 1, 1988, as amended at 58 FR 8183, Feb. 11, 1993]

#### § 233.2 Definitions.

The definitions in parts 230 and 232 as well as the following definitions apply to this part.

*Act* means the Clean Water Act (33 U.S.C. 1251 *et seq.*).

*Corps* means the U.S. Army Corps of Engineers.

*Federal Indian reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

*FWS* means the U.S. Fish and Wildlife Service.

*Indian Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

*Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution.

*NMFS* means the National Marine Fisheries Service.

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe, as defined in this part, which meet the requirements of § 233.60. For purposes of this part, the word State also includes any interstate agency requesting program approval or administering an approved program.

*State Director (Director)* means the chief administrative officer of any State or interstate agency operating an approved program, or the delegated