



ECOS

Resolution 08-3
Approved April 14, 2008
New Orleans, Louisiana

Reaffirmed March 29, 2011
Arlington, Virginia

Revised April 2, 2014
Sausalito, California

Revised April 8, 2017
Washington, DC

Revised April 27, 2020
All Members Call

As certified by
Donald Welsh
Executive Director

STATE ASSUMPTION OF CLEAN WATER ACT SECTION 404 PERMIT PROGRAM

WHEREAS, states have the ability to assume jurisdiction over Section 404 dredge and fill permitting programs under the Clean Water Act (CWA) but in only two cases have sought and assumed the program; and

WHEREAS, states' goals are to maintain wetland protection, achieve consistency in program administration, and streamline the federal permit process; and

WHEREAS, states, the U.S. Environmental Protection Agency (U.S. EPA), and the U.S. Army Corps of Engineers (Corps) have worked together to develop guidelines and processes for state assumption of Section 404 of the Clean Water Act; and

WHEREAS, U.S. EPA created a Federal Advisory Committee to collaboratively address the lack of clarity about the criteria that will be used by a state or tribe, U.S. EPA, and the Corps to identify assumable and non-assumable waters, and U.S. EPA and the Corps adopted the prevailing position of the committee supporting states' ability to assume the program; and

WHEREAS, with the exception of a few states and tribes seeking or considering seeking assumption, most remain reluctant to assume the 404 program due to lack of clarity on criteria used to identify assumable and non-assumable waters pursuant to Section 404; and

WHEREAS, states that assume the federal Section 404 permitting program are prohibited from using or receiving federal funding, including U.S. EPA wetland program development grants, to implement their state wetlands permit programs.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Supports assumption of Section 404 dredge and fill permitting responsibilities to states that demonstrate a robust commitment and capacity to protect wetlands;

Encourages U.S. EPA and the Corps to continue work with states to bring clarity and certainty to the identification of assumable and non-assumable waters, including the development of clear instruction for states and tribes seeking to assume the 404 program;

Encourages the Corps to work collaboratively with states and U.S. EPA to transfer expertise in a non-adversarial approach to facilitate and support state assumption of 404 programs;

Encourages a unified federal government approach (including U.S. EPA and the Corps) that supports states that wish to assume the program;

Supports U.S. Congressional action to authorize and appropriate adequate funding for states that assume the Section 404 permitting program and to broaden the eligibility of the existing U.S. EPA wetland grant program for both development and implementation activities; and

Supports a simplified and more flexible process for state assumption of the Section 404 Permit Program in order to improve effectiveness and provide more efficient and effective permitting for applicants while maintaining protection of wetlands in the United States.