



ECOS

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As certified by
Ben Grumbles
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 only three states have successfully 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 CWA Section 404; 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 primarily due to a lack of funding to implement the program, but in some cases also due to some remaining ambiguity 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 do not have access to the same processes and procedures for determining compliance with the Endangered Species Act, which

delays the decision making process for Section 404 permits and discourages state assumption of the program; and

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

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

Supports assumption of Section 404 dredge and fill permitting responsibilities by 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 instructions 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 the 404 program;

Encourages the Corps to work with states to establish permit review timeframes, data sharing, and workload sharing to expedite the permit process;

Encourages U.S. EPA to provide support for states seeking to assume the 404 program similar to the funding made available for states seeking to regulate the geologic sequestration of carbon dioxide under the Safe Drinking Water Act Class VI program;

Encourages U.S. EPA and the Corps to establish a state-level approach to conducting Endangered Species Act review comparable to Endangered Species Act Section 7 consultation used by the Corps and encourages the agencies to look at examples in other states of successful programmatic agreements;

Encourages a unified federal government approach, including U.S. EPA, the Corps, U.S. Fish and Wildlife, and the National Marine Fisheries Service, that supports states that wish to assume the program;

Encourages U.S. EPA to publicly express support for states that wish to pursue assumption of CWA 404 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 to support both development and implementation activities; and

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