

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

404 Program Assumption Methods

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404 Program Assumption Methods

There are two basic ways the state could administer Section 404 dredge and fill permits. They are not mutually exclusive; that is, they can be pursued and implemented simultaneously or separately.

- (1) **State Primacy.** Under CWA Section 404, a state may administer a program to issue and enforce Section 404 permits, subject to certain geographic exceptions. A state program would require federal approval, be subject to the oversight by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, and permits that the state may issue will be subject to EPA's veto authority. Proposed legislation (HB 78 and SB 27) expressly authorizes the state to pursue and administer the program if it is reasonable to do so.
- (2) **State Programmatic General Permits (State PGPs).** The Corps of Engineers has authority to issue general permits for dredge and fill actions that are similar in nature with minimal cumulative effects. These permits can be implemented by the state under agreement with the Corps of Engineers and are not subject to the geographic limitations associated with state primacy. The State of Alaska likely already has statutory authority to administer State PGPs, but the proposed legislation (HB 78 and SB 27) provides funding for the state to explore and pursue both this option and the primacy option.

State Primacy

Under Option 1, to assume state primacy, Alaska must submit an application to EPA. That application includes:

- A *letter from the Governor* requesting approval of the State's application;
- An *Attorney General statement* of legal authority that confirms that the State's laws and regulations are sufficient to implement the 404 program and that will ensure consistency with the federal program;
- The State's applicable *statutes and regulations*;
- A detailed *program narrative* that describes how the state will issue permits, ensure permit compliance and perform enforcement, track issued permits and enforcement actions, and submit an annual report to EPA;
- A description of the State's *resources* (staff, job classes, duties, stable funding sources) sufficient to implement and enforce the program;

- *Memoranda of Agreement* with EPA and the Secretary of the Army that describe the relationships and duties between the agencies under 404 program assumption.

EPA is the approval authority for State 404 programs and must consult with the Secretary of the Army and the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service. The Clean Water Act sets specific timeframes for the federal agencies to review a State's application for 404 program primacy.

- Program Assumption should be expected to take a minimum of 4-5 years.

State PGPs

Option 2 provides states the ability to cooperatively issue and administer programmatic general permits with the Corps.

- State PGPs are general permits issued by the Corps of Engineers and managed by the state that authorize and identify the terms, limitations, and conditions under which classes of projects and activities may be authorized under Section 404, with a much more efficient and abbreviated review by the Corps of Engineers; the Corps retains oversight of the state's administration of the PGPs.
- State PGPs may be issued on a local, regional, or statewide basis. The state could pursue administration of Corps-issued PGPs under an MOU regardless of whether it seeks primacy of Section 404 permitting.
- Authorizations to conduct dredge or fill activities under State PGPs are issued to applicants with small projects and minimal adverse environmental impacts, individually or cumulatively.
- A PGP is designed to: simplify the evaluation process; provide equivalent environmental protection; reduce unnecessary duplicative project evaluation; and promote more efficient use of resources.
- PGPs offer more flexibility and can apply to areas subject to the federal navigational servitude.