Assumption of Clean Water Act
Section 404: FAC Subcommittee on Assumable Waters

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ASWM Winter Meeting
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Overview

Background
- CWA 404(g): Assumption
- Concerns raised by states and tribes

EPA's efforts to address concerns
- Previous efforts
- Continued commitment

Federal Advisory Committee (FAC)
- What is a FAC?
- What is the FAC’s charge?

Schedule

Getting involved
Background:
CWA §404 (g): Assumption

➢ The Clean Water Act – states/tribes may assume dredge and fill permitting program

➢ Section 404(g) describes:
  ➢ Procedures EPA follows and criteria EPA applies in the approval and oversight of CWA §404(g) programs
    ➢ Includes (b)(1) guidelines, public notice and comment procedures, federal coordination
  ➢ Process to request approval of state/tribal 404 program - 120 day process, can be extended
  ➢ Lists complete package requirements including:
    ➢ MOA with EPA on coordination for program administration and enforcement
    ➢ MOA with USACE on how pending CWA 404 permits shall be transferred and a list of waters retained by the USACE

➢ State or tribal programs must:
  ➢ Have equivalent scope of jurisdiction*
  ➢ Regulate at least the same activities
  ➢ Allow for public participation
  ➢ Be consistent with the (b)(1) Guidelines
  ➢ Have adequate enforcement authority

* State or tribal programs may have broader jurisdiction; however, the approved 404 program will have the same scope
Concerns Raised by States & Tribes

- How to address threatened and endangered species
- Section 7 consultation
- Post assumption
- Lack of implementation funds
- Partial or phased assumption not an option
- Application process is perceived as both ambiguous & inflexible
- Compliance with other federal laws
- Consistency vs equivalency
- Defining scope of waters for which a state/tribe would assume permitting responsibility
EPA’s Efforts to Address Concerns

- **Previous Efforts**
  - Participation in ECOS 2010 streamlining workgroup
  - Clarification of applicability of section 7 ESA consultation to EPA approval of CWA §404(g) programs – December 2010

- **Continued Commitment**
  - Nancy Stoner letter – June 2014
    - Identify path which will engage stakeholders
  - Ken Kopocis letter – November 2014
    - National Advisory Council for Environmental Policy and Technology
    - Engagement of key stakeholders
  - Federal Register Notice – March 16, 2015
Federal Advisory Committee (FAC)

What is a FAC?

“any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof,” that is established or utilized by the federal government to obtain advice or recommendations and is not composed solely of full-time or permanent part-time federal officers or employees.

FAC may only provide advice or recommendations and may not establish law or policy or carry out government functions.*

Benefits of using a FAC

Independent advice representing diverse points of view
Agency is better able to make informed decisions
Facilitate improved buy-in for decisions being made

* Exceptions can be made by statute or Presidential directive
What is the FAC process for this effort?
- Nominations for members – anticipate up to 25
  - Will have some federal members
- Subcommittee will be formed under NACEPT
- Will have a limited duration and narrow focus
- Ms. Laura Bachle will be the Designated Federal Official (DFO)
- FAC meetings will be held in person or via webinar and will be open to the public

What will the FAC’s charge be?
- To provide advice and recommendations on how the EPA can best clarify assumable waters pursuant to CWA §404(g)(1)
- This FAC will not consider other aspects of state or tribal assumption under CWA §404
Schedule

- Presented idea of subcommittee to - November 2014
- Appointment of subcommittee members by EPA Administrator – typically 30 – 60 days
- Targeting first subcommittee meeting - July 2015
- Anticipate approximately 4 – 6 meetings
- NACEPT provides formal recommendations to EPA Administrator
- Next steps - Consideration of recommendations and advice
Getting Involved

- Nominate someone or yourself to be considered for appointment to the subcommittee
  - How to submit a nomination can be found at www.regulations.gov FRL: 9923–96–OW
  - For further information send inquiries to the DFO, Ms. Laura Bachle, via e-mail at assumablewaters@epa.gov

- Participate in the meetings
  - Each meeting will be publically noticed
  - Each meeting will have a public input session

- Raise ideas through your member organizations who are members of the subcommittee