

DATE: July 23, 2019

TO: Wetland Study Council

FROM: Dan Helsel, Amanda Minks & Mike Kowalkowski
404 Assumption Project Team

SUBJECT: Potential Alternatives to 404 Assumption

WSC Suggested Discussion Points

What are the issues/problems that §404 assumption would improve?
Is there other information we should include in our evaluation?
Are there other alternatives that should be evaluated?
What is the optimal time frame for a completed §404 assumption feasibility report?
Should portions of the report be prioritized such as alternatives or resource needs?

Section 404 Assumption Alternatives

The 2018 EPA Wetland Program Development Grant (WPDG) awarded to the department included three tasks:

- 1) Comparing federal and state regulatory standards for the discharge of dredged or fill materials in navigable waters of the state;
- 2) Evaluation of the existing and necessary fiscal and staffing resources for §404 assumption and
- 3) Evaluation of alternatives to §404 assumption that could provide permit streamlining and reduced costs for applicants.

Under Task 3, alternatives to §404 assumption would partially or fully achieve advantages of assumption without having to expend the political capital and state resources to assume the entire §404 program from the COE. Section 404 assumption key advantages include improving permitting efficiency, reducing permitting times, costs and duplicities while maintaining the same level of environmental protection afforded by the federal rules. As part of the WPDG Task 3, the department is planning to evaluate the six alternatives identified by Minnesota (MNDNR, 2016) to §404 assumption including:

- Programmatic general permits and State programmatic general permits
- Additional nationwide and/or regional general permits
- Additional state exemptions if §404 approval is granted
- Creation of special area management plans (SAMP)
- Improved federal-state jurisdictional and permitting processing coordination
- Hiring additional COE staff

State programmatic state general permits

State programmatic general permits (SPGP) are a type of programmatic general permit, under USC 33 §1344(e), for activities that will only cause minimal adverse environmental effects. SPGPs are designed to avoid duplication of effort by the COE and state. The COE and state collaboratively develop SPGPs which are then reviewed every five years and can be re-issued by the COE with input from other agencies (EPA, USFWS, etc.). The SPGP defers the administrative responsibilities for eligible permitted activities to the state.

The department evaluation approach includes meeting with St. Paul COE MN District to develop a list of potential activities and thresholds that could be efficiently handled by department staff. We plan to estimate the number of projects that would be eligible for the SPGP each year and the associated efficiency savings (time, money, duplication, etc.) for the applicants and state.

We plan to inventory the types of SPGP currently in place for other states and COE districts, their eligibility requirement and environmental thresholds. The inventory will be used to identify key SPGPs that may be useful here in Wisconsin and we would follow with estimates of the associated efficiency savings.

Nationwide/regional general permits

The St. Paul District has in place 54 nationwide permit available for use in Wisconsin, 22 of which have been approved through the state water quality certification (WQC). The WI WQC also denies eight of NWP while another eight of the NWP were approved for use in WI with restrictions (links below). The COE has one regional general permit (RGP-002) that keeps in place general permitting options for three activities: maintenance construction, utility line discharges and wildlife ponds.

The department is comparing the regulatory requirements between COE and WI general permits to evaluate whether there are permitting efficiencies available through better alignment of the general permits or initiation of new state or regional COE permits. The evaluation will also include inventorying the types of regional general permits other COE districts and state have in place and exploring associated permit efficiencies of their use.

State exemptions

Minnesota identified increasing the number of state exemption as an alternative to §404 assumption. This alternative is useful in streamlining the state processing of activities that affect wetlands and may have limited applicability in Wisconsin since federal permitting efficiencies is the driver for §404 assumption. The department plans to inventory and review the exemptions used by states and especially in Minnesota and evaluate whether permit efficiencies can be realized.

Special area management plans

Special area management plans (SAMP) are designed under the Coastal Zone Management program and specifically under 16 USC §1452(3). Wisconsin currently has one special area management plan developed for the City of Superior and includes about 5,500 acres of wetlands. The SAMP identified about 1,000 acres of wetlands where COE and State SAMP general permits may be used. The City handles the initial eligibility and standard review working with the applicant. The SAMP streamlines the COE and department review of general permits since the City works with the applicant develop a project that is eligible and compliant with the general permit.

The department will evaluate the feasibility adding SAMP areas within the Great Lake Coastal Zone and if wetland permitting efficiency within specific communities could benefit by the use of specific SAMP general permits.

Administrative processing improvement

The department will work closely with COE to determine if there are administrative or information technology measures that could be implemented that would increase permitting efficiencies. Currently, all application and exemption permit information is submitted to the department and then forwarded to the COE directly. The department will meet with COE supervisors, staff and administrative staff to discuss and evaluate administrative and IT efficiency options.

Staffing

The department will work closely with COE to determine if existing federal or state resource can be reallocated or specialized to address key permitting activities that commonly cause delays (i.e. jurisdictional determinations, enforcement resolution, complex project evaluations, etc.).

References

MNDNR. 2016. Minnesota Section 404 Assumption Feasibility Study – Plan of Study. Minnesota Department of Natural Resources, Minneapolis, MN.

Informational Links

ASWM SPGS Fact Sheet: https://www.aswm.org/pdf_lib/spgps_0508.pdf

COE NWP in WI: <https://www.mvp.usace.army.mil/missions/regulatory/nwp/>

NWP issued/denied by WI WQC:

<https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/NWPs/WI%20DNR%20WQC.pdf?ver=2017-06-12-160042-430>

City of Superior SAMP: <https://www.ci.superior.wi.us/565/Special-Area-Management-Plan-SAMP>

COE SAMP GPs:

Residential Development: <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/WI-Special/1996-06788-SDE%2020190710%20SAMP%20Residential%20GP.pdf?ver=2019-07-11-150854-920>

Public Development: <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/WI-Special/1996-06788-SDE%2020190710%20SAMP%20Pub%20Dev%20GP.pdf?ver=2019-07-11-151022-767>

Institutional Development: <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/WI-Special/1996-06788-SDE%2020190710%20SAMP%20Inst%20Dev%20GP.pdf?ver=2019-07-11-151135-623>

Commercial-Industrial Development: <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/WI-Special/1996-06788-SDE%2020190710%20SAMP%20Com%20Ind%20Dev%20GP.pdf?ver=2019-07-11-151336-077>