

Oregon's Assumption of the CWA §404 Program

Oregon's progress towards assumption

Oregon's Fill/Removal program has advanced since 1980s aligning state program with federal 404 program

- ❖ Features of state program that enhance or exceed the federal program include:
 - Public accessible electronic tracking of permits/applications
 - Resource planning assistance to local jurisdictions and public (LWIs, Goal 5 planning, wetland delineation reviews, etc.)
 - Rapid responses on compliance and enforcement of state issued permits
 - Development of technical tools to improved the science of regulatory decisions
 - Leadership in providing compensatory mitigation opportunities
 - Leadership in developing streamlining efforts between the Corp and other state partners

404 Assumption – Why EPA and not Corp?

- ❖ Congress designed a “two-headed” system for the 404 program, so Corps permitting program is jointly regulated by EPA under the Clean Water Act
- ❖ Corp provides day-to-day operations of permitting decisions while EPA provides environmental standards for permitting and defines 404 exemptions
- ❖ Congress provided for the transfer of CWA authorities to approved states through EPA in 1977 Amendments
- ❖ Congress limited the extent of assumable waters by states, some waters must remain with the Corps

CWA § 404 Program Assumption Approval Process

Assumption Approval Process

- ❖ Assumption package submitted to EPA
 - 30 day EPA review for package completeness
 - Complete – state notified; 120 day statutory clock begins
 - Incomplete - package returned to state; 120 day clock does not begin

Assumption Approval Process cont.

- ❖ 120 day review period includes:
 - State notification package is complete
 - Copy sent to COE, FWS and NMFS ≤ 10 days
 - Comments due to EPA within 90 days
 - Notice of assumption request published in Federal Register and newspapers (RA)
 - 45 day comment period
 - Public hearing 30+ days after Federal Register notice published

What is the Permit Process in State Assumed Programs and EPA's Oversight Role?

Permit Process Once Assumed

- ❖ State transmits, to EPA, notice of every permit application received
- ❖ EPA reviews permit applications where federal review is not waived
- ❖ State shall not issue a permit to which EPA has objected or placed requirements for a permit condition, until EPA's concerns are addressed

Permit Process Once Assumed cont.

❖ Waiver of review:

- MOA with EPA identifies categories of projects for which EPA review is waived
- EPA can not waive review of:
 - Draft general permits
 - Discharges that may impact endangered species
 - Discharges that may adversely impact waters of another state
 - Discharges with known or suspected toxic or hazardous pollutants
 - Discharges proximal to public water supply intakes
 - Discharges within critical State/Federal areas

EPA Oversight

- ❖ Review of permits not exempt. EPA may require review of additional categories or all permits e.g.,
- ❖ Insures State program consistency with new requirements
 - e.g., Mitigation regulations, Rapanos guidance
- ❖ Program reporting
 - State submits draft annual reports:
 - Draft annual report made available for public review
- ❖ Periodic Program Review and Evaluation