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Pursuing Clean Water Act  
404 Assumption:  
What States Say About the  
Benefits and Obstacles

ASWM Annual State/Federal Coordination Meeting  
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May 30, 2008

# Presentation Overview

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- Activities to watch
- Assessment process
- State response highlights
- Questions and discussion
  - What would you like EPA to focus on?
  - What do you see are the major obstacles, besides funding?
  - Partial Assumption: what does this mean and how would it work?

# Activities to watch

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- CWRA – Clean Water Restoration Act
  - Restore scope of CWA
  - Define Waters of the US
  - Congressional timetable: out of committee by end of session
- Environmental Council of the States (ECOS) Resolution – 4/14/08
  - Supports delegation of 404 responsibilities to states
  - Encourages development of CWA 404 assumption guidelines
  - Supports authorization and appropriation of funds for states that assume the 404 program and the use of EPA's WPDGs for both development and implementation activities
  - Supports a simplified and more flexible process for state assumption of the 404 program, including partial assumption

# Assessment Process

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- Reviewed historic files
- Spoke with EPA Regional staff
- Selected states/tribes to interview based on history of “serious inquiry”
- Developed interview questions
- Interviewed 9 states
  - FL, KY, MD, MI, NJ, ND, OR, VA\* and WI
- Documented interview responses

\* EPA Regional staff interviewed as VA lead was no longer available.

# Response Highlights:

## Why states consider assumption

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- Increase permit review efficiency (9)
- Provide more consistent, thorough protection of the resource (4)
- Achieve consistency in program administration (3)
- Directed to by state legislature, governor or statute (3)

# Response Highlights:

## Type of state program in place

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- 7 of 9 states interviewed had a comprehensive or well developed wetland protection program in place at the time of their assumption investigation
- Other 2 states had minimal wetland protection measures in place
- SPGP: several states had one in place, were pursuing or pursued after abandoning assumption

# Response Highlights:

## How far in the process did states get?

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- 9 of 9 consulted with stakeholders and developed initial resource estimates
- 8 of 9 examined regulatory consistency
- 7 of 9 proposed statutory, rule, or programmatic changes
- 5 of 9 made statutory, rule, or programmatic changes
- 3 of 9 developed draft assumption requests
- 2 of 9 assumed CWA 404

## Response Highlights:

Federal involvement in the process that did not result in assumption

	<b>EPA</b>	<b>USACE</b>	<b>USFWS</b>
<b>Heavily involved</b>	6 states	2 states	
<b>Moderately involved</b>		1 state	4 states
<b>Minimally involved</b>	1 state	3 states	3 states
<b>No involvement</b>		1 state	

- States tend to focus on working through equivalency issues with EPA before working issues with others
- Only a subset of states got far enough in the process to substantively engage other agencies

# Response Highlights:

## Changes to state program resulting from assumption investigation

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- Improved communication and coordination between state and federal agencies (3)
- Regulatory changes to provide for state program consistency with 404 (3)
- Minor changes to make state program more seamless with 404 (2)
- Adopted SPGP (2)

# Response Highlights:

## Will states reconsider assumption?

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- 2 of 7 states said yes
- Others said:
  - Only if federal funding is provided (2)
  - Only if there's political will to address other barriers they identified (1)
  - Only if state program staffing is restored to previous levels (1)
  - It's possible, though unlikely if SPGP works well (1)

# Response Highlights:

## Barriers to CWA 404 assumption

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- Lack of state program equivalency (4)
- Lack of state implementation funds (3)
- Working out acceptable way to handle threatened & endangered species issues with Services (3)
- State interest in partial, or incremental steps toward, assumption (2)
- 404 implementation by USACE is going fine / state doesn't want to pay for something feds are already doing (2)
- State politics (2)
- Loss of key state staff driving assumption effort (2)

# Response Highlights: Additional Findings

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- States spent \$225K, on average, to investigate assumption (EPA provided grants to 6 of 9 states)
- States without comprehensive programs in place did not make it as far in the assumption process
- Lack of implementation funds is a threshold barrier to assumption – it is one of the first barriers a state encounters, short-circuiting further investigation and identification of additional barriers
- It takes a lot of work for states to assume (even for states with comprehensive programs already in place)
- States that have assumed 404 feel that the combination of federal and state involvement makes for a more stable, consistent program

# Response Highlights: Recommendations to EPA

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- Provide federal funding for implementation (7)
- Expand EPA Regional staff/resources to support assumed programs (2)
- Provide detailed guidance on steps needed for assumption (particularly regarding ESA) (3)
- Develop clearer/easier ways to step up to assumption (2)

# Questions and discussion

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- Should EPA develop guidance on steps for assumption?
  - How important is this?
  - What would you like to see in guidance?
- Partial Assumption
  - How could this be defined?
  - How would it work?
- What would you like EPA to do to help states and tribes?
  - How would this be implemented?

# Contact information

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