

Solving Current Problems with Clean Water Act Jurisdiction and Section 404

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Three Areas to Address

- Clarify Jurisdiction
- Clarify/enhance the role of the states and tribes
- Improve Permitting

Jurisdiction

- Congressional action is needed to clarify that “waters of the U.S.” include all wetlands and waters, not just navigable waters. Jurisdiction should be restored to “pre-SWANCC” jurisdiction through the Clean Water Restoration Act or a similar mechanism.
- Present efforts to regionalize wetland definition and delineation criteria should be continued.

Role of States/Tribes

- Congress should clarify that Clean Water Act regulation of wetlands and waters is a “national” program rather than a federal program with some state help. A national program should involve a federal, state, and tribal partnership with some role for local governments as well. States and tribes should be encouraged to adopt regulations and protection efforts for seasonal tributaries, partially isolated wetlands, and other infrequently flooded waters.

Role of States/Tribes

- Congress should adopt legislation more specifically legitimizing state programmatic general permits and programmatic general permits under the Clean Water Act. The nationwide permit program should be phased out over time and replaced with state by state/tribal spgp's or pgp's. Clear guidance and procedures should be provided so that Corps Districts are directed to work with states to develop state pgp's and spgp's

Role of States/Tribes

- Congress should adopt legislation explicitly requiring the Corps to provide 90-120 days for completing 401 certification before issuing general permits.
- Congress should adopt legislation explicitly requiring that the Corps to apply 401 cert denials/conditions and enforce them.
- Congress should adopt legislation authorizing and funding an enhanced state/tribal wetland grant program for developing and implementing state wetland programs

Improve Permitting

- Staffing levels at EPA and Corps HQ need to be sufficient to run a high visibility, high workload program with timely responses.
- Joint permitting is needed with shared state and federal databases.
- Development of better information is needed for permit applicants such as wetland probability maps (Ralph Tiner), development of “turbo tax” like software for permit applications
- Funding for cost-share development of up-to-date surface water maps (streams, wetlands, lakes, etc.) for GIS is needed to improve jurisdictional calls and permit application analysis.

Improve Permitting

- The states need to be able to lead permitting through 401 certification/state pggps or spgps or assumption (see expanded role for states).
- Eliminate behind the scenes, special interest negotiations that circumvent the public comment process.
- Specific areas of the country where there are problems with permitting need to be identified and resolution or recognition of those problems is needed where delays are reasonable due to unique situations that involve more than permitting.

Other Ideas/Comments

- Add you thoughts and concerns here.....

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