



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

DIVISION OF WATER
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March 24, 2023

The Honorable Donny Olson
The Honorable Bert Stedman
The Honorable Lyman Hoffman
Co-Chairs, Senate Finance Committee
Alaska State Legislature
Sent Via Email

Dear Senators Olson, Stedman, and Hoffman,

Thank you for having the Department of Environmental Conservation present to the Senate Finance Committee on March 17, 2023. Questions arose during the meeting on March 17, that required additional information. The questions and responses are as follows:

Acres of wetlands in the other three states with 404 Primacy, and their staffing levels and ongoing operating costs.

Currently, the United States Army Corps of Engineers (USACE) has 48 staff dedicated to 404 permitting in the State of Alaska. From 2017-2022, the USACE completed roughly 775 actions annually. Recognizing the USACE will maintain about 25% of the permitting actions, we feel confident in our proposal of 32 staff to complete approximately 580 actions per year.

The other three states with 404 primacy are New Jersey, Michigan, and Florida.

New Jersey assumed the 404 Program in 1994 and has 915,000 acres of wetlands (approximately 16% of its surface area). New Jersey also regulates "transition areas" adjacent to waters of the United States (WOTUS) and reviews/authorizes activities in both WOTUS and non-WOTUS areas, but they do not separately track the staff time or expense for an activity in WOTUS and subject to the 404 Program versus an activity located in a "transition area" (i.e., non-WOTUS) and subject to the state program. New Jersey's combined budget including the 404 Program is \$14.5 million and includes 176 staff.

Michigan and Florida are unable to distill the number of their staff (or percentage of staff time - total FTE) that work solely on the 404 Program as their agencies and permitting structures include broader and more expansive state permitting programs that extend beyond the federal requirements for the state-assumed 404 Program.

Michigan assumed the 404 Program in 1984 and has 6.5 million acres of wetlands (approximately 10% of its surface area). Michigan's combined budget that also oversees the 404 Program is \$12.3 million and includes 82 staff in 10 offices.

Florida assumed the 404 Program in 2020 and has approximately 10 million acres of wetlands (approximately 24% of its surface area). Florida's combined budget that also oversees the 404 Program is \$11.3 million and includes 170 staff.

Number of 404 permits issued in each of the last five years, and the acreage impacted, as well as the number of permits that were denied to the extent that is possible.

The USACE issued the following number of 404 (only) permits during the past 5 years. These numbers do not include permits issued under Section 10 of the Rivers and Harbors Act or permits issued under both Section 10 and Section 404.

Year	General Permit Authorizations (verifications)	Standard Permits Issued	Total Permits Issued	Permits Withdrawn
2018	246	42	288	46
2019	275	36	311	52
2020	256	30	286	63
2021	275	22	297	89
2022	220	19	239	63

There are a variety of reasons for a USACE permit to be withdrawn. An applicant can voluntarily withdraw a permit application, ceasing further USACE evaluation of their application (they can also re-initiate the USACE evaluation by submitting a complete permit application after the withdrawal). The withdrawal can also be initiated by the USACE if they determine that a permit is not required, or that a different USACE permit tool is more appropriate (for example, an applicant requests authorization under a General Permit and the USACE determines a Standard Permit is the more appropriate permitting tool).

The USACE denied only one 404 permit action during the five-year timeline.

The USACE does not maintain data on the overall acreage of wetlands impacted. A State 404 Program could do so for assumed waters.

Please provide a quantitative answer to the “what are the estimated legal / lawsuit costs.”

As presented in the Governor’s amended budget, included in the committee packet, and as described in committee, the \$175k Reimbursable Service Agreement (RSA) for FY2024 to the Department of Law (DOL) will provide funding for the DOL to assist DEC in the development of the 404 Program for the State, the application for the Environmental Protection Agency (EPA) approval, and the drafting of program regulations. Once the program is approved and being administered by DEC, the RSA will provide for continued support to the DOL for legal advice on 404 Program permitting and appeals.

If we were to change our mind and decide to hand this back to the feds, what is the process for that? Do we just stop funding the team, or do we have to apply / formally relinquish in some way?

Once assumed, a state can relinquish the 404 Program by notifying EPA of their intent to dissolve the program. Since the 404 Program would no longer be administered in accordance with CWA Section 404 and the 404(b)(1) guidelines, the EPA Administrator will, after a public process, withdraw approval of the program (see 40 CFR part 233.53 Withdrawal of program approval).

In committee I also committed to sharing the Nebraska Department of Environment and Energy Section 404 Assumption Investigation Report; that report is attached.

Sincerely,



Randy Bates
Director

Attachments: Nebraska Department of Environment and Energy Section 404 Assumption Investigation Report

cc: Ken Alper, Staff to Senator Olson
Dave Scott, Staff to Senator Stedman
Maridon Boario, Staff to Senator Hoffman
Senate Finance Committee