



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

April 27, 2023

Shannon Miller
Program Manager
Division of Water
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

Dear Ms. Miller:

Thank you for sharing with the U.S. Environmental Protection Agency the Clean Water Act Section 404 Dredge and Fill Program Assumption Feasibility Report (“Feasibility Report”) prepared by Jade North, LLC for the Alaska Department of Environmental Conservation (“DEC”). We appreciate the overview that DEC staff provided to EPA on the Feasibility Report during our meeting on February 2, 2023. As requested by DEC during that meeting, EPA is providing DEC with high-level comments on the Feasibility Report. We hope that our communications can serve as a starting point for a series of interagency discussions regarding the assumption of the CWA section 404 permitting program should DEC receive the funding and direction to prepare an assumption request package.

The Feasibility Report identifies multiple challenges that will need to be addressed to develop an effective CWA section 404 permitting program. These issues are similar to those identified by other states that have pursued CWA section 404 program assumption and by the Association of State Wetland Managers. EPA is familiar with these challenges and would like to highlight a few of them here, understanding that additional issues could arise during DEC’s preparation of a program and an assumption request.

As emphasized in the Feasibility Report, the extent of assumable waters has implications for a state CWA section 404 permitting program, including the permitting workload and associated staffing needs. Even if DEC were to assume the CWA section 404 permitting program, the U.S. Army Corps of Engineers, Alaska District (“Corps”) would retain certain waters. Identifying which waters would be regulated by a state CWA section 404 program and those waters where the Corps would retain authority to regulate discharges will require the collaborative efforts of the state agencies, EPA, the Corps, and other stakeholders. EPA expects that as the agencies make progress in identifying the extent of assumable waters, the appropriate size of the state program and the required resource investment will become clearer.

The Feasibility Report addresses capacity development for a state CWA section 404 permitting program and contains suggestions for the rapid establishment of a new program. The Feasibility Report also identifies that simultaneous hiring of managers and staff would be necessary to meet the identified two-year program assumption schedule. Program staff training is a critical component of establishing the new program and new program staff and managers would require training and coaching. Based on our experience, it may take years to develop the experienced management team and program staff necessary to achieve the potential program efficiencies discussed in the Feasibility Report. EPA anticipates

sharing lessons learned from other state efforts and our own program knowledge as ADEC develops its own effective 404 program.

EPA is currently developing a draft regulation that is intended to facilitate state assumption pursuant to CWA section 404(g). We will let you know when the draft rule is available for public review and encourage DEC to review and comment on the draft rule, which is anticipated to be released in summer 2023.

EPA looks forward to working closely with DEC on CWA section 404 program development. If you have any questions regarding these comments, please contact Matthew LaCroix by email at LaCroix.Matthew@epa.gov or by phone at (907) 271-1480.

Sincerely,

David Croxton, Manager
Wetlands and Oceans Section