



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 7 2017

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Update to Internal Analysis of Potential U.S. Environmental Protection Agency Projects and Permits for Title 41 of the Fixing America's Surface Transportation Act (FAST-41)

FROM: Robert Tomiak
Acting Councilmember, Federal Permitting Improvement Steering Council
Director, Office of Federal Activities
U.S. Environmental Protection Agency

TO: Mike Shapiro, Acting Assistant Administrator, Office of Water
Sarah Dunham, Acting Assistant Administrator, Office of Air and Radiation
Barry Breen, Acting Assistant Administrator, Office of Land and Emergency Management

This memorandum provides some clarifications and updates to the November 7, 2016 Memorandum on Internal Analysis of Potential U.S. Environmental Protection Agency Projects and Permits for Title 41 of the Fixing America's Surface Transportation Act (November 2016 memorandum). These clarifications stem from a recently issued guidance document providing information on FAST-41 implementation. On January 13, 2017, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) published a Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (January 2017 guidance) to assist agencies in carrying out their responsibilities under FAST-41.

The first update to the November 2016 memorandum relates to the interpretation of an abbreviated authorization. The November 2016 memorandum noted that the EPA, as a working group member, provided recommendations on the interpretation of an abbreviated authorization. The January 2017 guidance is generally consistent with what the EPA anticipated in the November 2016 memorandum. Specifically, the guidance explains:

An abbreviated authorization is interpreted as a statutory or regulatory authorization process whereby a project meeting the applicable criteria for that authorization type receives an expedited authorization decision (e.g., within one year) or a simplified process (e.g., United States Army Corps of Engineers General Permits).

EPA permits that were identified as abbreviated authorizations in the November 2016 memorandum will still be considered abbreviated authorizations under OMB's and CEQ's January 2017 interpretation.¹

The second clarification relates to invitations for the EPA to participate in the FAST-41 process as either a participating or cooperating agency, in which being a cooperating agency would generally entail a greater level of responsibility. Whereas the November 2016 memorandum stated that the EPA would be invited as a participating agency if a covered project needed a permit issued by the EPA, the January 2017 guidance clarifies that in the event the EPA is issuing such a permit, the EPA will be invited as a cooperating agency. The January 2017 guidance elucidates that a FAST-41 cooperating agency "has a concurrence role for the permitting timetable, a heightened role for modification of schedules and decisions to extend public comment periods, a specific role in alternatives analyses and selection of methodologies for environmental review of the covered project, and a concurrence role in decisions to develop the preferred alternative to a higher level of detail."

Attachment

cc: Larry Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance
Andrew Sawyers, Director, Office of Wastewater Management
Peter C. Grevatt, Director, Office of Ground Water and Drinking Water
Stephen D. Page, Director, Office of Air Quality Planning and Standards
Barnes Johnson, Director, Office of Resource Conservation and Recovery

¹ The final interpretation will not change the number of EPA permits that were identified as abbreviated authorizations in the November 2016 memorandum.