



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

OFFICE OF THE
ADMINISTRATOR

September 20, 2018

The Honorable Kay Ivey
Governor of Alabama
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130-2751

Dear Governor Ivey:

The Clean Water Act affirms the role of states and authorized tribes to manage their water resources and explicitly provides an option for states and authorized tribes to assume responsibility for the dredged or fill permitting program pursuant to section 404(g). I am writing to make you aware of two important actions the Department of the Army and the U.S. Environmental Protection Agency (EPA) have taken regarding tribal and state assumption of the Clean Water Act section 404 program authority.

In the Spring Regulatory Agenda, the EPA announced plans for the first comprehensive revision to the existing section 404(g) regulations since 1988. The EPA intends to modernize these regulations and foster a greater interest by the authorized tribes and states in assuming this authority. The EPA would appreciate the opportunity to discuss these potential regulatory improvements with representatives from your state through early, pre-proposal intergovernmental involvement in the rule revision process this fall. The EPA will follow up with staff from your relevant agencies on further details regarding the planned input sessions. If you have any questions please contact me; for questions regarding meetings this fall, your staff may contact Becky Cook-Shyovitz at Cook-Shyovitz.Becky@epa.gov or 202-564-5340, and for specific questions about the 404 program assumption or the proposed rulemaking, please contact Michael McDavit at McDavit.Michael@epa.gov or 202-566-2465.

In addition to the rulemaking effort by the EPA, the Department of the Army recently issued a memorandum to the U.S. Army Corps of Engineers (Corps) that clarifies the program's approach to identifying waters that the Corps would retain should a state assume section 404 permitting authority. This guidance is consistent with the recommendations provided in a June 2017 Federal Advisory Act Committee report on assumable waters to the EPA Administrator. The EPA stands ready to assist your state if you are interested in assuming section 404 authority. Enclosed, please find a summary of the key steps a state would take to assume section 404 authority.

EPA staff in the Office of Water and the Regional offices are available to provide advice and assistance on this important program. The EPA is committed to enhancing the role of authorized tribes and states to administer the nation's environmental laws. The EPA looks forward to working with the states, as co-regulators under the Clean Water Act, to seize this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew R. Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler
Acting Administrator

Enclosure