

Florida's State 404 Program

Program Description

Division of Water Resource Management

Florida Department of Environmental Protection

August 20, 2020

Introduction

Purpose

The following program description documents the structure, organization, and procedures that the Florida Department of Environmental Protection (Department) will follow to administer Section 404 of the Clean Water Act (CWA) in the state of Florida, pursuant to 33 USC §1344 (g).

Guidance

This document is a full and complete description of the Florida State 404 Program that will be established and administered under state law. It includes all information necessary for the Environmental Protection Agency's (EPA) review and approval in accordance with the provisions of 40 C.F.R. Part 233. The program description is organized in sections with each section corresponding to the lettered requirement in 40 C.F.R. Part 233, with one additional section titled "Additional Information" that includes information that may not fit exactly within a lettered category. In instances where detailed descriptions of the permitting program standards and procedures are required, a reference is provided to the memorandum of agreement (MOA), Memorandum of Understanding (MOU), document, or State 404 Program regulation that describes those standards and procedures. The standards and procedures are not repeated in detail within this document. Helpful links to the Department website are provided throughout for convenience.

Legislative Authority

In 2018 the Florida Legislature passed section 373.4146, Florida Statutes (F.S.) providing the Department the "... power and authority to assume, in accordance with 40 C.F.R. part 233, the dredge and fill permitting program established in s. 404 of the Clean Water Act..." The Department will implement Chapter 62-331, Florida Administrative Code (F.A.C.), including the State 404 Program Applicant's Handbook to fulfill the legislative mandate.

Overview

State assumption of the 404 program will provide a streamlined permitting procedure where both federal and state requirements are addressed by state permits. This would provide greater certainty to the regulated community, conserve resources of both applicant and regulator, and afford the state greater control over its natural resources while complying with federal law.

If Florida's program is approved, it will be the first state in decades to assume authority to implement the section 404 permitting program, and only the third state to do so. Assumption of the dredge and fill permitting program under section 404 of the Clean Water Act will result in significant efficiencies for permittees and allow better engagement with the public, all while rigorously protecting the environment.

The State 404 Program will apply to any project proposing dredge or fill activities within state assumed waters. Such projects include, but are not limited to: single family residences; commercial developments; utility projects; environmental restoration and enhancement; linear

transportation projects; governmental development; certain agricultural and silvicultural activities; and in-water work within assumed fresh water bodies such as docks, piers, marinas, living shorelines, and other shoreline stabilization.

A Notice of Rule Development for the State 404 Program rules was published on May 11, 2018. As part of the rule development process the Department held three rulemaking workshops throughout the state. Workshops were held in Tallahassee and online via webinar on May 30, 2018; in Orlando on May 31, 2018; and in Fort Myers on June 1, 2018. The public comment period ran from May 11, 2018 until July 31, 2018. All comments and public input were reviewed and incorporated into the draft rule as appropriate. The Department then published the Notice of Proposed Rule on February 19, 2020. Five public hearings were held via webinar on April 2, 6, and 10, 2020, and by teleconference on April 24 and 27, 2020. The public comments and input were reviewed and incorporated as appropriate, and Notices of Change were published on June 8, and June 11, 2020. The final rule certification packages were filed on July 21, 2020 for modifications to Chapter 62-330, F.A.C. (Environmental Resource Permitting) and Chapter 62-331, F.A.C. (State 404 Program). The rules will become effective on the date that EPA publishes approval of Florida's program in the Federal Register. The finalized rules are included in this submission, along with other required components of the assumption package such as Memoranda of Agreement (MOAs) between the Department and the Corps and the Department and U.S. Environmental Protection Agency (EPA).

The Department continues to prepare for assumption by conducting both beginner and advanced-level wetland delineation training and State 404 Program regulatory and compliance training, which will be provided to existing staff prior to the effective date of assumption and will be provided on regular intervals and as needed into the future.

The Department worked diligently with EPA, the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) to ensure that the state's process for complying with the requirements of the Endangered Species Act (ESA) is at least as stringent as the federal program. Additionally, the Department has been working with EPA, the State Historic Preservation Office, and Indian Tribes in Florida to ensure that the outcomes of the state's process for protection of historical and cultural resources are at least as protective as those under the federal process.