Message

From: Grossarth, Shari [Grossarth.Shari@epa.gov]
Sent: 12/3/2020 11:17:25 PM
To: Beck, Whitney [beck.whitney@epa.gov]; Nurse, Leanne [Nurse.Leanne@epa.gov]
CC: Hurld, Kathy [Hurld.Kathy@epa.gov]; Trombley, Michael [Trombley.Michael@epa.gov]; Ruf, Christine [Ruf.Christine@epa.gov]
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule
Attachments: Final Decision FRN 2- HQ Good Cause Final Rule 11-30-2020-OP.docx

Hi Whitney,

Sorry to be so slow on this. I added a few comments.

Shari
202-566-2242

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Thursday, December 03, 2020 3:15 PM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Hi Leanne,

Thank you for this quick feedback, this is incredibly helpful. I'll double check on the good cause guidance language as recommended and run any revisions by OGC.

Shari, I know you may or may not have time to provide edits today. But if you have already started edits, I am happy to compile them into this version. I know that I need to convert this to an "Administrator rule" format so that is also on my list.

Best,
Whitney

From: Nurse, Leanne <Nurse.Leanne@epa.gov>
Sent: Thursday, December 3, 2020 3:05 PM
To: Beck, Whitney <beck.whitney@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: Re: Early Draft of Florida CWA 404 Good Cause Final Rule

Offering suggested edits, esp re the statutory and executive order section.

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Thursday, December 3, 2020 11:23 AM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Perfect, thanks Leanne for helping to track the NSD next-steps.

I was wondering when we might get feedback on the FRN so we could share with OW IO and others? As I mentioned, we are particularly wondering about how the statutory/ executive order section is supposed to look for good cause rules, since it's such a unique rule format. I appreciate your helping to track that down!

I'm just adding Mike & Christine too so they know that we think the Administrator needs to sign the rule. They might also be interested in any information from OP on the rule statutory/executive order section.

Best,
Whitney

From: Nurse, Leanne <Nurse.Leanne@epa.gov>
Sent: Thursday, December 3, 2020 11:19 AM
To: Beck, Whitney <beck.whitney@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>
Subject: Re: Early Draft of Florida CWA 404 Good Cause Final Rule

Whitney,

We are tracking this action closely and are aware of the urgency. The non-significance determination request, which needs OP review prior to sending it to OMB, is expected to clear your IO soon, per Mike, whom I've copied. I will coordinate that aspect with Darryl Adams.

Leanne

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Thursday, December 3, 2020 11:13 AM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Hi all,

And just to add more urgency, we did some digging and realized the **ADMINISTRATOR needs to sign the rule**. We were hoping for OW AA signature but don't think our delegation supports that.

Thanks!
Whitney

From: Beck, Whitney
Sent: Thursday, December 3, 2020 11:07 AM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Hi Leanne and Shari,

I wanted to check in and see if OP has early feedback on the FRN, since we're on quite the time crunch. We need to share with OW IO and my management in the next day or two, since we're ideally aiming for signature on 12/18.

Thanks again for all of your help!

Best,
Whitney

From: Nurse, Leanne <Nurse.Leanne@epa.gov>
Sent: Tuesday, December 1, 2020 1:53 PM
To: Beck, Whitney <beck.whitney@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: Re: Early Draft of Florida CWA 404 Good Cause Final Rule

This looks like your on the right track. Thank you for this update.

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Tuesday, December 1, 2020 1:51 PM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Thanks Leanne! Just to keep you in the loop, here's what we've been working on. Feel free to call anytime if you or your management have questions for us.

- Get this action tiered with OP AA approval
  - We've filled out a tiering form proposing Tier 3 and have added our rule to the ADP tracker; we're hoping the rule will get tiered in the December tiering round.
- Submit a Non-significance determination request in ADP tracker under the "OMB determination" milestone and also send the NSD request as a Word document attachment to the desk officer (me), cc Darryl Adams (tiering coordinator).
  - We've developed a NS determination which has been approved by our office director, and we are meeting with OW IO tomorrow to discuss the process for getting Dave Ross approval. After his approval, we'll upload into the ADP tracker and send an email as requested.
- Submit a EO 13771 3C waiver for not having been published in the Reg Agenda [I'll discuss with Mary tomorrow]
  - I believe this is folded into the NS determination form that Darryl provided last week, as we did fill out a justification statement for the waiver in that form.

From: Nurse, Leanne <Nurse.Leanne@epa.gov>
Sent: Tuesday, December 1, 2020 1:35 PM
To: Beck, Whitney <beck.whitney@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: Re: Early Draft of Florida CWA 404 Good Cause Final Rule

Whitney,

This is some preliminary feedback (apologies for duplicating information you may already have). You need to:

- Get this action tiered with OP AA approval
- Submit a Non-significance determination request in ADP tracker under the "OMB determination" milestone and also send the NSD request as a Word document attachment to the desk officer (me), cc Darryl Adams (tiering coordinator).

- Submit a EO 13771 3C waiver for not having been published in the Reg Agenda [I'll discuss with Mary tomorrow]

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Tuesday, December 1, 2020 12:41 PM
To: Grossarth, Shari <Grossarth.Shari@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: Early Draft of Florida CWA 404 Good Cause Final Rule

Hi Shari and Leanne,

As I mentioned last week, OW is planning to issue a final rule if EPA approves Florida's request to assume a CWA section 404 program. The final rule just got entered into the ADP tracker last week and doesn't even have a SAN- but it's called "Codifying EPA's Adjudicatory Decision on Florida's Clean Water Act Section 404 Program Request."

EPA has to make a decision by December 17, and R4 will submit a (non-rulemaking) FRN communicating that decision. OW would like to issue the final rule ASAP after that decision. The final rule would be issued without notice and comment for good cause (we've been in contact with Mary on good cause rules), and we're routing a non-significance determination to OP soon (we've been in contact with Darryl & Leanne).

Because of the quick timeframe, we wanted to provide a VERY EARLY DRAFT FRN sooner than later to get your feedback. You'll see some comments for the OW/R4 FL team (still getting their feedback!) but also some sections where I particularly wanted to get early OP feedback. For instance, we know the E.O. & Statutory requirements section is different for good cause final rules. The good cause guidance that Mary provided has some limited information about how to structure that section. We did find an example good cause rule from 2015 that I used as a template (attached), and I'm curious to know if anything looks like it's missing?

I also wanted to make sure we're on the right track with the reg text formatting (I know we can perfect later since OW will still have more edits...).

Please let me know what questions I can answer, and if you need additional information.

Best,
Whitney

Whitney Beck, Ph.D.
Program Development and Jurisdiction Branch
Office of Water, U.S. EPA
beck.whitney@epa.gov
202-566-2553