Message

From: Hurld, Kathy [Hurld.Kathy@epa.gov]
Sent: 8/26/2020 1:51:48 PM
To: Morris, Stephanie [Morris.Stephanie@epa.gov]; Green, Noelle [Green.Noelle@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Beck, Whitney [beck.whitney@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Manibusan, Mary [Manibusan.Mary@epa.gov]
Subject: RE: question about FRNs and is this to be a notice or a rulemaking notice?

R4 will be routing this as they are the signatory. They know they need to send it to you all, but we need to know the format prior to routing. Thanks.

From: Morris, Stephanie <Morris.Stephanie@epa.gov>
Sent: Wednesday, August 26, 2020 9:48 AM
To: Hurld, Kathy <Hurld.Kathy@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Manibusan, Mary <Manibusan.Mary@epa.gov>
Subject: RE: question about FRNs and is this to be a notice or a rulemaking notice?

Kathy, thank you. I started asking you this, but didn't get back to clarifying my question. Did you all submit the document for pre Signature review? if not, we must review prior to signature, so you will need to speak to Mary Manibusan if you need this document signed by Friday.

Stephanie Morris
Federal Register Liaison, Senior Editor
Regulatory Management Division,
US Environmental Protection Agency, #3526D
Washington, DC 20460; Mail code 1803A

FR Tip: Please refer to EPA's Federal Register Electronic Signature and Submission page for all FR document submittals!

***Many FR questions can be answered via our* intranet website! ***

IBR questions only, contact EPA-IBR@epa.gov

From: Hurld, Kathy <Hurld.Kathy@epa.gov>
Sent: Wednesday, August 26, 2020 9:39 AM
To: Morris, Stephanie <Morris.Stephanie@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Manibusan, Mary <Manibusan.Mary@epa.gov>
Subject: RE: question about FRNs and is this to be a notice or a rulemaking notice?

Stephanie,

Thank you so much for your time this am. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

As I mentioned we need to have the RA sign this ASAP (Friday) so that we can publish in the FR (and we know they have delays) in time to meet our various statutory and regulatory obligations of holding public hearings, soliciting public comment, and making our decision all within 120 days (by 21/17/20).

I am copying Noelle Green and Carrie Wehling in OGC who can assist with any conversations with the OFR attorney – if you believe such a conversation should be convened.

Thank you, Kathy

From: Morris, Stephanie <Morris.Stephanie@epa.gov>
Sent: Tuesday, August 25, 2020 10:36 AM
To: Hurld, Kathy <Hurld.Kathy@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Manibusan, Mary <Manibusan.Mary@epa.gov>
Subject: RE: question about FRNs and is this to be a notice or a rulemaking notice?

Kathy and all, my apologies for not responding earlier, I can't look and respond to this right now. I will set aside some time later today to look it over and respond at that time.

Thanks.

Stephanie Morris
Federal Register Liaison, Senior Editor
Regulatory Management Division,
US Environmental Protection Agency, #3526D
Washington, DC 20460; Mail code 1803A

FR Tip: Please refer to EPA's Federal Register Electronic Signature and Submission page for all FR document submittals!

*****Many FR questions can be answered via our*** intranet website! *******

IBR questions only, contact EPA-IBR@epa.gov

From: Hurld, Kathy <Hurld.Kathy@epa.gov>
Sent: Tuesday, August 25, 2020 9:46 AM
To: Grossarth, Shari <Grossarth.Shari@epa.gov>; Morris, Stephanie <Morris.Stephanie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: question about FRNs and is this to be a notice or a rulemaking notice?

Still waiting to hear back from Stephanie, your info below should help her. Thanks

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From: Grossarth, Shari <Grossarth.Shari@epa.gov>
Sent: Tuesday, August 25, 2020 9:45 AM
To: Hurld, Kathy <Hurld.Kathy@epa.gov>; Morris, Stephanie <Morris.Stephanie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: question about FRNs and are you the right contact?

(And I don't know if you heard something from Stephanie Morris already on this that I don't know. She's the FR pro, so I don't mean to get in the way of anything she's said!)

Shari

From: Grossarth, Shari
Sent: Tuesday, August 25, 2020 9:43 AM
To: Hurld, Kathy <Hurld.Kathy@epa.gov>; Morris, Stephanie <Morris.Stephanie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: question about FRNs and are you the right contact?

Hi Kathy,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Have you worked with the Water Policy Staff on this? I'll see if I can find someone in the other part of my office who might have some insight. **Ex. 5 Deliberative Process (DP)** See links below to the FRNs for the notice and request for comment and the final program approval. **Ex. 5 Deliberative Process (DP)** **Ex. 5 Deliberative Process (DP)** Someone who worked on the Idaho NPDES program approval may be able to help too? Karen Burgess in R10 is listed as the contact for Idaho NPDES program approval.

Shari
202-566-2242

ACTION: Notice of availability; request for comment; notice of public hearing.
https://www.govinfo.gov/content/pkg/FR-2017-08-11/pdf/2017-16822.pdf

ACTION: Notice.
https://www.govinfo.gov/content/pkg/FR-2018-06-14/pdf/2018-12806.pdf

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From: Hurld, Kathy <Hurld.Kathy@epa.gov>
Sent: Tuesday, August 25, 2020 9:40 AM
To: Grossarth, Shari <Grossarth.Shari@epa.gov>; Morris, Stephanie <Morris.Stephanie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: question about FRNs and are you the right contact?

Hi Stephanie,

We are meeting with Mary Walker (R4 RA), Susan Bodine, David Ross and David Fatouhi at 11 am this am. Any insights on my question below. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks for your attention to this. - Kathy

From: Hurld, Kathy
Sent: Monday, August 24, 2020 12:28 PM
To: Grossarth, Shari <Grossarth.Shari@epa.gov>; Morris, Stephanie <Morris.Stephanie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: question about FRNs and are you the right contact?

Hi Shari and Stephanie,

We received a package from FL requesting we approve their program request. Shari as you know, we need to take public comment on the package (among a thousand other things) all within 120 days (which is December 17). Once we approve, we then publish our decision in the FR and amend our regulations at 233, thus triggering when the state program is in effect and the state starts issuing permits.

We currently have a fairly final draft FRN (in the notice format) ready for the Regional Administrator's signature. I will note that we are under very strict statutory timelines and to meet them we need to have the RA sign this FRN this week so I really appreciate your attention to this question. Thanks, Kathy

Our questions are:

Ex. 5 Deliberative Process (DP)

Michigan Department of Natural Resources Section 404 Permit Program Approval, 49 FR 38947-01
(CFR text modified in later years):

AGENCY: Environmental Protection Agency.
ACTION: Approval of State Program.
SUMMARY: The State of Michigan has submitted an application under Section 404(g) of the Clean Water Act for the approval of a program to regulate the discharge of dredged or fill material into certain waters of the United States within the State. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate

discharges of dredged or fill material meets the requirements of Section 404(h) of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern daylight time on October 16, 1984, and shall become effective on that date.

FOR FURTHER INFORMATION CONTACT: Elmer D. Shannon, Chief, Dredge and Fill Section, Water Quality Branch, Water Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. PH (312) 886–6680. Copies of the responsiveness summary of the public hearing and public notice are available from the above address.

SUPPLEMENTARY INFORMATION: The Federal Clean Water Act (33 U.S.C. 1251 et seq., hereinafter the "CWA") established the Section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into waters of the United States at specified disposal sites. Section 404(g) of the CWA provides that the Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into waters of the United States (other than those waters which are presently used, or are susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit the Administrator of the USEPA a full and complete description of the program it proposes to establish and administer under State law, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program. The Administrator is required to approve such submitted program unless the program does not meet the requirements of Section 404(h) of the CWA. Among other authorities, the State must have: (1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under Section 404(b)(1); (2) adequate authority, including civil and criminal penalties, to abate violations of the permit or the permit program; and (3) authority to ensure that the Administrator, the public, any other affected State, and other affected agencies, are given notice of each application for permit and are provided an opportunity for a public hearing before a ruling on each such application. The regulations establishing the requirements for the approval of State 404 Permit Programs were published at 48 FR 14208 on April 1, 1983 (40 CFR Part 233)

On April 3, 1984, the State of Michigan completed the submission of an application under Section 404(g) for EPA approval of a program administered by the Michigan Department of Natural Resources (MDNR) to regulate the discharge of dredged or fill material into waters of the United States within the State. On April 10, 1984, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the Michigan 404 Program submitted by the State (49 FR 14185). A public hearing was held on May 10, 1984, in Lansing, Michigan.

After careful review of this application, I have determined that the Michigan 404 Program submitted by the MDNR to regulate discharges of dredged or fill material meets the requirements of Section 404(h) of the CWA, and hereby approve it. **The effect of this approval is to establish this program as the applicable regulatory program under the CWA for discharges of dredged or fill material into waters of the United States in Michigan** that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto.

In this application, Michigan chooses not to assert jurisdiction over Indian lands or reservations for purposes of its 404 Program, Therefore, the Corps will continue to operate its 404 Program on any Indian lands or reservations.

Since this approval, in large part, simply ratifies State regulations and requirements already in effect under State law, EPA is publishing this approval, effective immediately. This will enable Michigan to begin immediately regulating discharges of dredged or fill material under the Federally approved program.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 233, which sets forth the requirements for a State requesting the authority to administer its own program to regulate discharges of dredged or fill material. The terms may not all apply to this particular notice.
List of Subjects in 40 CFR Part 233
Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply, Indians-lands, Intergovernmental relations Penalties, Confidential business information.
...
This is the notice announcing the change to the regulations and codification of the state program:

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:
PART 233—404 STATE PROGRAM TRANSFER REGULATIONS
40 CFR § 233.42
1. Amend 40 CFR Part 233 by adding a new Subpart D and section 233.42 as follows:
Subpart D—Approved State Programs
40 CFR § 233.42
§ 233.42 Michigan.
The applicable regulatory program for discharges of dredged or fill material into waters of the United States in Michigan that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto, except those on Indian lands, is the program administered by the Michigan Department of Natural Resources, approved by EPA, pursuant to Section 404 of the CWA. Notice of this approval was published in the Federal Register on [ ]; the effective date of this program is October 16, 1984.
This program consists of the following elements, as submitted to EPA in the State's program application.
(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable 404 Program under the CWA for the State of Michigan. This incorporation by reference was approved by the Director of the Federal Register on October 16, 1984.
(1) The Great Lakes Submerged Lands Act, MCL 322.701 et seq., reprinted in Michigan 1983 Natural Resources Law.
(2) The Water Resources Commission Act, MCL 323.1 et seq., reprinted in Michigan 1983 Natural Resources Law.
(3) The Goemaere-Anderson Wetland Protection Act, MCL 281.701 et seq., reprinted in Michigan 1983 Natural Resources Law.
(4) The Inland Lakes and Stream Act, MCL 281.951 et seq., reprinted in Michigan 1983 Natural Resources Law.
(5) The Michigan Administrative Procedures Act of 1969, MCL 24–201 et seq.
(6) An act concerning the Erection of Dams, MCL 281.131 et seq., reprinted in Michigan 1983 Natural Resources Law.
(7) R 281.811 through R 281.819 inclusive, R 281.821, R 281.823, R 281.824, R 281.832 through R 281.839 inclusive, and R 281.841 through R 281.845 inclusive of the Michigan Administrative Code (1979 ed., 1982 supp.).
(b) Other Laws. The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:
(1) Administrative Procedures Act, MCLA 24.201 et seq.
(2) Freedom of Information Act, MCLA 15.231 et seq.

(3) Open Meetings Act, MCLA 15.261 et seq.
(4) Michigan Environmental Protection Act, MCLA 691.1201 et seq.
(c) Memoranda of Agreement. (1) The Memorandum of Agreement between EPA Region V and the Michigan Department of Natural resources, signed by the EPA Region V Administrator on December 9, 1983.
(2) The Memorandum of Agreement between the U.S. Army Corps of Engineers and the Michigan Department of Natural Resources, signed by the Commander, North Central Division, on March 27, 1984.
(d) Statement of Legal Authority. (1) "Attorney General Certification Section 404/State of Michigan", signed by Attorney General of Michigan, as submitted with the request for approval of "The State of Michigan 404 Program", October 26, 1983.
(e) The Program description and any other materials submitted as part of the original application or supplements thereto.
[FR Doc. 84–26055 Filed 10–1–84; 8:45 am]
BILLING CODE 6560–50–M

New Jersey Department of Environmental Protection and Energy Section 404 Permit Program Approval, 59 FR 9933-01:

Also codified CFR text above, including the following excerpt -

§233.71 New Jersey.
The applicable regulatory program for discharges of dredged or fill material into waters of the United States in New Jersey that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection and Energy, approved by EPA, pursuant to section 404 of the CWA. The program becomes effective March 2, 1994. This program consists of the following elements, as submitted to EPA in the State's program application:

Respectfully,

Kathy Hurld
Clean Water Act 404(g) – U.S. EPA Lead
Office of Wetlands, Oceans, and Watersheds
E-mail: Hurld.Kathy@epa.gov
Phone: 202-566-1269
Currently working remotely during COVID-19; please call: **Ex. 6 Personal Privacy (PP)**