404g Talking Points

- A personal priority of Assistant Administrator Ross's is to see more states and tribes assume administration of the Clean Water Act section 404 dredged or fill permitting program for [certain] waters within their jurisdiction.

- Under Clean Water Act Section 404, a permit is required before dredged or fill material can be discharged into "waters of the United States," including certain wetlands. Section 404(g)(1) of the CWA provides states and tribes the option of administering the CWA section 404 permit program in certain waters within the state's or tribe's jurisdiction respectively.

- To date, only Michigan and New Jersey have assumed administration of the Section 404 program – the Army Corps of Engineers retains permitting authority for the rest of the country.

- Last Spring, in the Spring Regulatory Agenda, the EPA announced it is undertaking a rulemaking to modernize the Section 404 state assumption process of the CWA Section 404 permitting program. Through this effort, EPA is seeking to:
    - clarify assumption requirements,
    - improve the usability of the regulations, and
    - foster a greater long-term effectiveness by the states and authorized tribes in assuming the program.

- The national rulemaking will follow-up on recommendations from a federal advisory committee that focused specifically on which waters a state or tribe assumes permitting authority for under section 404 of the CWA.
    - Currently in quiet phase of rulemaking – reviewing input and putting pen to paper.

- In November and December 2018, EPA hosted prerule input sessions with the states and tribes seeking input on areas of the regulations which could benefit from clarity and how that clarity could be provided. 58 tribes participated in the tribal webinars in November 2018 and 5 tribes provided written comments.

- We are currently drafting the proposed regulation, with the goal to issue the proposed rule later this fall, and final in 2021.