SUPPORTING STATEMENT FOR ICR 0220.13
CLEAN WATER ACT 404 STATE-ASSUMED PROGRAMS

1. Identification of the information collection

1(a) Title of the Information Collection
Clean Water Act Section 404 State-Assumed Programs (Renewal)

1(b) Short Characterization/Abstract
This information collection request has three parts:
A. Information needed for states or tribes to request program assumption.
B. Information needed from permit applicants.
C. Information included in the state or tribe's annual report.

A. Section 404(g) of the Clean Water Act (CWA) authorizes states [and tribes] to assume the CWA Section 404 permit program for discharges of dredged or fill material into certain Waters of the U.S. States/tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR Part 233) for an approvable program. Specified information and documents must be submitted by the state/tribe to the Environmental Protection Agency (EPA) to request assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision to either approve or deny the state/tribe's assumption request starts. The EPA must provide the information contained in the assumption request submission to the other involved federal agencies (Army Corps of Engineers, Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)) and to the general public for review and comment.

B. States/tribes must be able to issue permits that assure compliance with all applicable statutory and regulatory requirements, including the CWA Section 404(b)(1) Guidelines. States/tribes and the reviewing federal agencies must be able to review proposed projects to evaluate, avoid, minimize and compensate for anticipated impacts. EPA's assumption regulations establish minimum requirements that must be included in the state/tribe's permit application so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements generally reflect the information that must be submitted when applying for a CWA Section 404 permit from the Army Corps of Engineers.

EPA is responsible for oversight of assumed programs to ensure that state/tribal programs are in compliance with applicable requirements and that state/tribal permit decisions adequately consider, minimize, and where required compensate for anticipated impacts.

C. States/tribes must evaluate their programs annually and submit an annual report to EPA assessing their program. EPA's assumption regulations establish minimum requirements for the annual report.

2. Need for and use of the Collection

2(a) Need/Authority for the Collection
Section 404(g) of the CWA authorizes states [tribes] to assume the CWA Section 404 permit

ED_005978A_00063791-00001 FL CWA 404 Assumption FOIA_Interim Release 7

program for discharges of dredged or fill material into certain Waters of the U.S. Implementing regulations (40 CFR 233) establish specific information that must be submitted by the state/tribe to request program assumption. EPA is charged with approving or denying a state/tribe's assumption request and overseeing/monitoring the state/tribe's program subsequent to approval.

2(b) Practical Utility/Users of the Data

A. States and tribes can assume the CWA Section 404 permit program (CWA 404(g)). States and tribes must meet certain program requirements to be eligible to assume the program. These requirements are in the CWA and in implementing regulations (40 CFR 233). To assume the CWA Section 404 permit program, states and tribes must meet the minimum statutory and regulatory requirements under the CWA. For example, states and tribes must submit sufficient information for EPA to determine that the state or tribe's program: has an equivalent scope of geographic jurisdiction as the federal program; regulates at least the same activities as the federal program; provides for sufficient public participation; ensures compliance with the CWA Section 404(b)(1) Guidelines, which provide environmental criteria for permit evaluation and decision; and has adequate enforcement authority.

States and tribes must submit required information if they want to assume the federal permit program for discharges of dredged or fill material into certain Waters of the U.S. A complete assumption application (40 CFR 233.10) includes copies of all applicable statutes and regulations including those governing applicable administrative procedures, a letter from the governor or equivalent tribal leader requesting program assumption, an Attorney General's statement regarding the adequacy of the legal authorities for the state or tribe's program (40 CFR 233.12), a Memorandum of Agreement with the EPA Regional Administrator (40 CFR 233.13), and a Memorandum of Agreement with the Secretary of the Army acting through the Army Corps of Engineers (40 CFR 233.14).

The required program description (40 CFR 233.11) must include the following information: description of scope and structure of the state or tribe's program including extent of jurisdiction, activities regulated, anticipated coordination, permit review criteria, the scope of permit exemptions (if any), procedures for permitting and administrative and judicial review, available funding and manpower, anticipated workload, copies of permit application forms, permit forms and reporting forms, the state or tribe's compliance evaluation and enforcement program, clarification of waters to be under state or tribal jurisdiction and waters to remain under the jurisdiction of the Army Corps of Engineers (a comparison of state/tribal and federal methodologies for delineating wetlands must also be included), and specific best management practices (BMPs) proposed to satisfy exemption provisions for farm roads, forest roads, and roads for moving mining equipment.

EPA provides a copy of the assumption request to the Army Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service for review and comment. EPA publishes notice of the assumption request and solicits public comments on the assumption request. EPA also holds public hearing(s) on the assumption request.

EPA reviews the documentation submitted by the state/tribe and considers comments received

from the public and the federal review agencies in making a decision to either approve or deny the assumption request.

B. States and tribes must be able to issue permits that assure compliance with all applicable statutory and regulatory requirements, including the CWA Section 404(b)(1) Guidelines (the environmental review criteria) (40 CFR 233.20). States and tribes and the reviewing federal agencies must be able to review proposed projects to evaluate, avoid, minimize and compensate for anticipated impacts. EPA's regulations establish minimum requirements (40 CFR 233.30) that must be included in the state or tribe's permit application so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements generally reflect the information that must be submitted when applying for a Section 404 permit from the Army Corps of Engineers.

EPA coordinates federal review of a subset of state/tribal permits. The intent of this review is to assure that state/tribal permits comply with the CWA requirements, including the section 404(b)(1) Guidelines, develop appropriate permit conditions to minimize adverse impacts and consider alternatives. To reduce delays in permit processing and to ensure adequate state/tribal programs, requirements for elements in the permit application were written into the federal regulations. These regulations incorporate much of the permit application information requirements contained in the Army Corps of Engineer's regulations (33 CFR 325).

C. EPA is responsible for oversight of assumed state or tribal programs to ensure that the state or tribal program is in compliance with applicable requirements and that the state/tribal permit decisions adequately consider, avoid, minimize and compensate for anticipated impacts (§404(l)). EPA's State Program Regulations establish minimum requirements for the state or tribal annual report (40 CFR 233.52).

If a state or tribal assumed program is not administered in accordance with requirements, EPA can revise the provisions for waiver of federal review of state/tribal permits and, in extreme situations, initiate withdrawal of the assumed program. To have a sound basis to initiate such an action, oversight and analysis of the state/tribe's permitting actions must be done. The state/tribe is the only source of basic permit data such as number of permit applications received and final action of these applications. The state/tribe should also be given the opportunity to evaluate and present their interpretation of this information and to identify any problems encountered in administering their program and recommendations for addressing these problems.

3. Non-duplication, Consultations, and Other Collection Criteria

3(a) Non-duplication

In most cases state/tribal assumption of the section 404 permit program for discharges of dredged or fill material into certain Waters of the U.S. eliminates duplication. Prior to an approved assumption, a permit applicant would have needed to get two separate permits for his proposed project – one from the Army Corps of Engineers and one from the state/tribal agency (if the state/tribe has a wetland regulatory program). After assumption is approved by EPA, only one permit is needed – from the appropriate state/tribal agency. A federal permit is no longer needed for discharges into those waters assumed by the state/tribe.

EPA identified information that the state/tribe must include in its annual report. This information includes permit numbers – number of applications received, permits issued, denied, modified; number of enforcement actions and the action taken. This type of information may be needed by the state/tribe for its own purposes – program evaluation, budget justification, etc. If the state/tribe prepares this type of information for its own needs, EPA will let the state/tribe select the period of time for the annual report to enable the state/tribe to re-use this information for both purposes.

3(b) Public Notice Required Prior to ICR Submission to OMB
First notice for renewing this ICR was published in the July 3, 2017, Federal Register and closed on September 1, 2017. (82 FR 30861). Four comments were received in response to this Federal Register notice. The commenters encouraged EPA to:

- not move backward on the Clean Water Rule.
- to please support clean water protections as the health of our fisheries is critical to maintaining related jobs while showing our children that we are more thoughtful and responsible stewards of wildlife than other recent generations.
- not repeal the Clean Water Act as clean water is the most important thing for humans!
- keep the nation's waterways free of pollution by keeping the President Obama rules governing them in place so something like Flint doesn't happen.

These comments are not responsive to the request for comments on EPA's ICR renewal relating to state assumed CWA section 404 programs.

3(c) Consultations
Amy Lounds, Chief,
Wetlands, Lakes and Streams Unit
Land and Water Management Division
Michigan Department of Environmental Quality
P.O. Box 30458
Lansing, Michigan 48909-7958
(517) 335-3470

Diane Dow, Director and
Madhu Guru, Assistant Director
Division of Land Use Regulation
New Jersey Department of Environmental Protection
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625
(609) 984-3444

3(d) Effects of Less Frequent Collections
A. The information needed to request program assumption is submitted only once – at the time

of the formal request to assume the federal permit program.

B. Since each permit is for a specific project in a specific location, a permit application must be submitted and processed for each project unless authorized by a general permit. The information is needed to evaluate the impacts of the specific project in the particular location in which it is sited. State/tribal respondents may report more often than quarterly due to the statutory requirement that a copy of each permit be transmitted to EPA.

C. Once a year reporting on the operation of its assumed program is an appropriate period of time for both EPA and the state/tribe to evaluate operation of the assumed program, identify trends and/or problems, and "solutions" to any identified problems.

3(e) General Guidelines
EPA expects that this ICR will generally meet all of OMB's general guidelines for information collections under 5 CFR 1320.5(d)(2).
3(f) Confidentiality
EPA does not make any assurances of confidentiality for this information.

A. The information included in the state/tribe's assumption request is made available for public review and comment.

B. The information included in a permit application is made available for public review and comment.

C. The information included in the annual report to EPA is made available to the public.

3(g) Sensitive Questions
This section does not apply because this ICR does not include any sensitive questions.

4. The Respondents and the Information Requested
4(a) Respondents/SIC Codes
A and C. States and tribes are the identified respondents since the CWA authorizes only states [and tribes] to assume CWA section 404 permitting authority.

B. Respondents are not identified by industry or business. Anyone who proposes a project which involves the discharge of dredged or fill material into waters within the jurisdiction of a state/tribal assumed program must submit a permit application to either the state or tribe unless authorized by a general permit.

4(b)Information Requested
(i) Data items, including record keeping requirements; (ii) Respondent Activities
A. The information needed for a complete assumption package is listed at 40 CFR 233.10:

1. Letter from the governor or Tribal equivalent formally requesting program assumption,
2. A complete program description (40 CFR 233.11),
3. Attorney General's statement (40 CFR 233.12),

4. Memorandum of Agreement with EPA (40 CFR 233.13),
5. Memorandum of Agreement with the Army Corps of Engineers (40 CFR 233.14), and
6. Copies of all applicable statutes and regulations.

Record keeping

No specific record keeping requirements.

B. Information that is needed for a complete permit application is listed at 40 CFR 233.30:

1. Name, address, and phone number of the applicant and adjoining property owners,
2. Complete description of the proposed project,
3. Description of the type, composition, source and quantity of the material to be discharged,
4. Certification that all the information submitted is true and accurate, and
5. Any additional information requested by the state/tribe to evaluate the project impacts.

Record keeping

See record keeping requirements for C below.

C. Information that must be included in the annual report is listed at 40 CFR 233.52. Items that must be included in the annual report are an assessment of the cumulative impacts of the state/tribe's program on the integrity of the regulated waters; identification of areas of concern or interest; the number and nature of individual and general permits issued, modified, denied; and number of enforcement actions taken, number of suspected unauthorized activities reported and nature of the action taken; and an estimate of the extent of activities regulated by general permits.

Record keeping

States/tribes with assumed programs are required to submit an annual report to EPA (40 CFR 233.52) evaluating the state's/tribe's program. Items that should be addressed in the annual report include an assessment of the cumulative impacts of the state/tribe's permit program on the integrity of the state/tribe's waters; identification of areas of particular concerns and/or interest; the number and nature of individual and general permits issued, modified or denied; number of violations identified and the number and nature of enforcement action taken; number of suspected unauthorized activities reported and nature of action taken; an estimate of extent of activities regulated by general permit; and the number of permit applications received but not yet processed.

5. The Information Collected-Agency Activities, Collection Methodology, and Information Management

5(a) EPA Agency Activities

A. Agency activities associated with review of a state/tribal assumption request

- determine if assumption request is complete; notify state/tribe within 30 days that application is complete,
- within 10 days, send copy of assumption request to the appropriate Army Corps of

Engineers, FWS and NMFS office,

- publish public notice about receipt of assumption request,
- hold public hearing(s),
- review public comments received,
- make decision to approve or deny assumption request,
- notify other federal agencies about the decision,
- notify the state/tribe about the decision, and
- publish notice of decision in the Federal Register.

B. Agency activities associated with review of a state/tribal permit application

- State/tribe will forward the public notice for any permit application subject to federal review (40 CFR 233.51) to EPA,
- EPA will provide a copy of the public notice to the appropriate Army Corps of Engineers, FWS and NMFS office for review and comment,
- if EPA intends to comment to the state/tribe on the permit application, EPA will notify the state/tribe of this intent within 30 days,
- if the state/tribe has been so notified, the permit shall not be issued until after receipt of the comment or 90 days from EPA's receipt of the public notice, and
- if the state/tribe receives comments from EPA either objecting to the permit or requesting permit modification, the permit shall not be issued until such objections or request for modification are resolved.

C. Agency activities associated with review of the annual report

- the state/tribe shall submit a draft annual report to EPA within 90 days of the end of the identified reporting period,
- the state/tribe shall make the draft report available to the public,
- within 60 days, EPA shall complete review of the draft report and submit comments, questions or request for additional evaluation to the state/tribe,
- within 30 days of receipt of EPA's comments, the state/tribe will finalize the annual report incorporating or responding to EPA's comments, and
- upon acceptance of the annual report, EPA will publish notice of availability in the Federal Register.

5(b) Collection Methodology and Management

The use of automated, electronic, mechanical, or other technological information collection techniques is not appropriate for this information.

A and C. The state/tribe is the only source of this information in that they know the statutes and regulations under which their programs are authorized. The state/tribe is the best source of information about their program – funding and manpower, permit application forms, numbers of permits processed, number of enforcement actions taken and disposition of these actions, and analysis of the cumulative impact of the program.

B. The permit applicant is the best source of information about the proposed project. Only the applicant knows what the purpose of the project is and what is planned. The applicant must

complete a permit application form and submit the completed form to the state/tribal agency administering the assumed program. This information is used by the state/tribe to evaluate the impact of the proposed project and by the federal review agencies. The information is made available to the public in a public notice if an individual permit is required.

5(c) Small Entity Flexibility
Small entities need to apply for a permit if a planned project involves the discharge of dredged or fill material into waters regulated by the assumed program. This is required of anyone who proposes to discharge. The information required from small entities applying for a state/tribal permit in an assumed program is the same information that would have been required from the Corps of Engineers if the state/tribe had not assumed the program.

EPA's State/Tribal Program Regulations (40 CFR 233.30(d)) provide flexibility for small projects in that the level of detail of information required in the permit application should be commensurate with the type and size of the project/discharge.

5(d) Collection Schedule
A. The state/tribe's assumption request is a one-time request. The timing of this request is determined by the state or tribe.

B. A permit application is submitted each time someone plans to do work that involves the discharge of dredged or fill material into waters of the United States. The timing for submitting a permit application is determined by the permit applicant.

C. The state/tribe must submit an annual report to EPA assessing its operation of the program. The yearly period reported on in the annual report can be set by the state/tribe.

6. Estimating the Burden and the Cost of the Collection
6(a) Estimating Respondent Burden
A. We estimate that a state/tribe will need 520 hours (approximately 1/4 of a work year) to prepare the documentation for EPA to determine that a state/tribe's assumption is complete. We estimate that two states or tribes may request program assumption over the next three years. This results in a total one-time burden of 1,040 hours over the next three years (347 hours annually).

B. We estimate that the average time needed to review a permit application is 10 hours. The actual time to review a permit application will vary greatly depending on the size and location of a planned project. Small projects will require less time; large, complex projects could require significantly more time. We estimate that the "average" assumed program will process 2,975 permits a year. This results in a burden of 29,750 burden hours per year per assumed program. This figure will vary with the assumed program. It is likely that some states/tribes will have significantly fewer permit applications requested each year; others may have more. The number of yearly permit applications may vary.

C. We estimate that a state/tribe will need 90 hours (approximately two working weeks) to collect and analyze the information and prepare the annual report.

6(b) Estimating Respondent Costs
(i) Estimating Labor Costs
A. We estimate that a state/tribe will need 520 hours (approximately 1/4 of a work year) to prepare the documentation for EPA to determine that a state/tribe's assumption is complete. We estimate that $60,210 (starting point of a GS-11, "Rest of U.S." locality) is an average state/tribal employee salary. This results in a one-time cost of $15,052.50. We estimate that two states or tribes may request program assumption over the next three years. This results in a total salary cost of $30,105. Adding a 1.6 overhead factor results in a cost of $48,168.

B. It is impossible to estimate the cost of filing an "average" permit application. The application for small projects can be completed by the permit applicant with little cost incurred. The permit application for larger, complex projects may require hiring outside parties such as environmental and engineering firms, surveyors, and lawyers.

C. We estimate that a state/tribe will need 90 hours to collect and analyze the information and prepare the annual report. Using the $60,210 for a starting state/tribal employee salary results in an approximate salary cost of $2,344.72 to prepare the annual report. Adding a 1.6 overhead factor results in a cost of $3,751.55.

(ii) Estimating Capital and Operations and Maintenance Costs
None

(iii) Capital/Start-up Operating and Maintenance (O&M) Costs
None

(iv) Annualizing Capital Costs
None

6(c) Estimating Agency Burden and Cost

A. Each state/tribal request to assume the Section 404 permit program must be reviewed by the federal government. EPA is the agency responsible for making a decision to either approve or deny an assumption request; the Corps of Engineers, Fish and Wildlife Service and National Marine Fisheries Service review and provide comments to EPA on the adequacy of the state/tribe's program. We estimate that this review requires approximately 200 hours (approximately 1/10th of a work year). At the rate of a GS-13 (locality rest of U.S.) (starting salary of $85,816), this translates into a federal salary cost of $8,224 per assumption request. This results in a total salary cost of $16,448. Adding a 1.6 overhead factor results in a cost of $26,316.80.

B. We estimate that federal review will be conducted on only a very small subset of state/tribal permit applications – approximately 25 permits per state/tribal program. The permits subject to federal review tend to be the larger projects with more potential for adverse environmental impacts. Because of this, we estimate that federal review will average 80 hours per permit

application. This results in an annual burden of 2,000 burden hours (approximately 1 work year) per assumed program. At the rate of a starting GS-11, this results in approximately $60,210 in salary cost. Adding a 1.6 overhead factor results in a cost of $96,336.

C. We estimate that review of each state/tribal annual report will take approximately 40 hours. At the rate of a GS-12 (starting salary of $72,168), this translates into a salary cost of approximately $1,383.20 per annual report. This results in a total salary cost of $5,532.80 Adding a 1.6 overhead factor results in a cost of $8,852.48.

6(d) Estimating the Respondent Universe and Total Burden and Costs

	Respondent Burden & Cost	Agency Burden & Cost
A: Program Assumption Request		
Number of States/Tribes expected to apply over term of this ICR	2	2
Application Hours per Request	520	200
Total Hours Requested	1040	400
Current OMB Inventory (Hours)	1040	400
Cost per Response	$15,052.50	$8,224
Total Cost with Overhead, per Response	$48,168	$26,316.80
B: Review of Permits	**State/Tribal Review of Permits**	**Agency Review of Permits**
Number of Permit Applications Reviewed (per State/Tribe) Annually	2975	25
Application Hours per Permit	10	80
Total Hours Requested per State/Tribe	29,750	2,000
Total Hours Requested for 4 State/Tribal Assumed Programs	119,000	8,000
Current OMB Inventory (Hours)	89,600	8,000
Total Annual Cost of Review per State/Tribe	(too variable to calculate)	$60,210
Total Annual Cost with Overhead for 4 State/Tribal Assumed Programs	(too variable to calculate)	$385,344
C: Annual Report	**State/Tribal Development of Annual Report**	**Agency Review of Annual Report**
Number of States/Tribes that have Assumed the Program	4	4
Hours per Report	90	40
Total Hours Requested	360	160
Current OMB Inventory (Hours)	320	160
Cost per Report	$2,344.72	$1,383.20
Total Cost with Overhead	$15,006.20	$8,852.48

6(e) Bottom Line Burden Hours and Cost Tables

(i)Respondent Tally The total average annual burden to states/tribes for assumed CWA section 404 permit programs is 119,707 hours. Note: This number was derived by adding 1/3rd of

the cost from section A, with the total annual cost from sections B and C in the table above. This was done to reflect the annual burden as required by OMB while recognizing section A of the table reflects that a state/tribe submits one request to assume the program and the burden estimate is per response that could be during one calendar year or stretched over several years. Costs will vary widely by state/tribe and permit, however there are no capital or O&M costs.

(ii) Agency Tally The burden to EPA for related activities is 8,293 hours and $402,986 in labor costs. Note: Here again the cost from section A of the table was divided by three to estimate an annual burden.

(iii) Variations in the Annual Bottom Line Annual variation is dependent upon how many states/tribes come forward with assumption applications

6(f) Reasons for Change in Burden
The burden estimate for Program Assumption requests included in the annual burden estimate decreased since the previous ICR as the that ICR included the three-year total number of hours. This ICR corrected that number to reflect the average annual number of hours. The burden estimate for permit review increased because while the estimated number of permits reviewed by a state per year decreased there was an increase in the number of hours spent reviewing each permit due to the increase in the number of times applicants requested a review of permit options and mitigation options.

6(g) Burden Statement
This collection of information is separated into three pieces. The annual public reporting and record keeping burden for this collection of information is estimated to average 520 hours to request program assumption, 10 hours to complete a permit application and 90 hours to prepare the annual report.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OW-2005-0023, which is available for online viewing at http://www.regulations.gov, or in person viewing at the Office of Water Docket in the EPA

Docket Center (EPA/DC), WCJ West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. ET, Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. An electronic version of the public docket is available at http://www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID Number EPA-HQ-OW-2005-0023. Also, you can send comments to the Office of Management and Budget at oira_submission@epa.gov, Attention: Desk Office for EPA. Please include the EPA Docket ID Number EPA-HQ-OW-2005-0023 and OMB Control Number 2040-0168 in any correspondence.