Message

From: Hurld, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]
Sent: 6/20/2017 6:03:55 PM
To: Kupchan, Simma [Kupchan.Simma@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]
Subject: comments welcome FW: 404 permitting and JD question
Attachments: Document1.docx

Ex. 5 AC/DP

Ex. 5 AC/DP

- kathy

-----Original Message-----
From: Hurld, Kathy
Sent: Monday, June 19, 2017 11:28 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: Fw: 404 permitting and JD question

Hi, if I craft a first draft, do you have time to review before I respond to this? If not, with whom should I coordinate? - thanks, Kathy _____
From: Eisenberg, Mindy
Sent: Saturday, June 17, 2017 8:02 PM
To: Hurld, Kathy
Cc: Downing, Donna
Subject: RE: 404 permitting and JD question

Thank you!

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Hurld, Kathy
Sent: Friday, June 16, 2017 8:36 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: 404 permitting and JD question

Mindy, I would like to more carefully craft a response on Monday but FYI - the short answer to the question is yes, states would be making JDs.

When a state assumes 404, yes they would be making jurisdictional determinations. These are made to determine if a CWA permit (in a state that has assumed the program, it would be.a state CWA 404 permit) is needed based on whether or not it is a regulated activity that would result in a discharge of dredged or fill material to a WOTUS. Remember there is EPA oversight, so they can't arbitrarily add or remove waters from CWA jurisdiction just because they have the 404 program. We'd need to come to the same conclusion.

Waters of the state can but are not necessarily broader (they can talk to MI and NJ to see how this works.
- Kathy
Sent from my iPhone

On Jun 16, 2017, at 8:16 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov<mailto:Eisenberg.Mindy@epa.gov>> wrote:
Assumption question

Sent from my iPhone

Begin forwarded message:
From: Jennifer Carr <jcarr@ndep.nv.gov<mailto:jcarr@ndep.nv.gov>>
Date: June 16, 2017 at 7:37:16 PM EDT
To: "'Eisenberg.Mindy@epamail.epa.gov<mailto:Eisenberg.Mindy@epamail.epa.gov>'" <Eisenberg.Mindy@epamail.epa.gov<mailto:Eisenberg.Mindy@epamail.epa.gov>>
Subject: 404 permitting and JD question
Hi Mindy,
I have a question about State assumption of the 404 program that I can't find an answer to on line. I am aware that states can apply for assumption of the 404 permitting program. There is a belief in my

leadership team that such an assumption also would permit the states the authority to make Jurisdictional Determinations of Waters of the US vs. waters of the State. I don't think that the latter is true, but I'm having trouble finding out which is accurate. Do you know off the top of your head?
Thanks, Jennifer

_____
<image001.png>

Jennifer L. Carr, PE, CPM, CEM
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