Message

From: Mcgill, Thomas [Mcgill.Thomas@epa.gov]
Sent: 8/11/2020 9:12:57 PM
To: Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]
CC: Allenbach, Becky [Allenbach.Becky@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]
Subject: delegations for 404 assumption

Jeaneanne,

Below is a summary of the delegation flexibility for the 404 assumption letters that we plan to issue following our receipt of a complete package from FDEP. I'm copying Mita, Matt and Kavita to weigh-in, in case they wish to add or clarify anything.

You have the authority to sign all assumption-related letters that we will be issuing within the next few weeks. My understanding is that Mary wishes to sign the letter to the Governor, and that she said will sign any letters where we are not certain of the delegation. I also understand that Mary is happy for you to sign any letters for which we are clear that you have been delegated the authority. Accordingly, we are preparing all letters for your signature with the exception of the letter addressed to the Florida Governor.

Here's a quick summary of the basis for the delegations:

- Based on the current Regional delegation, the WDD is delegated with the authority to approve or disapprove a request by a State to assume authorization to administer a 404 program. Such delegation includes all of the correspondence specified by the regs that lead up to this decision including the letter to the Governor to inform him we've determined their package to be complete, and the letters to the Corps, the FWS and NMFS to seek their comment within 90 days.
- If the EPA is to consult on ESA and NHPA, the attorneys believe the authority to communicate with the Services on such consultations can be made at the same level that is delegated under our 404(g) regs (i.e., WDD level for Region 4). In addition, we have precedent in the WD for ESA consultation to be made at your level on WQS actions, and at the branch level for 402 actions.
- The Region 4 SOP for Tribal consultation specifies that either the RA or Division Directors may issue letters to the Tribes to invite them to consult. In the WD and within the Region, I understand it has been common for such letters to be issued by the Division Directors.

If you have any questions please let us know.

Tom