Message

From: 404Assumption-FL [404Assumption-FL@epa.gov]
Sent: 9/4/2020 8:39:20 PM
Subject: Notice of the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program
Attachments: FL assumption - interested parties letter.pdf

Flag: Follow up

To: Interested Parties

Dear Sir or Madam:

The U.S. Environmental Protection Agency is hereby providing notice that on August 20, 2020, we received a complete package from the State of Florida requesting to assume administration of a Clean Water Act (CWA) Section 404 program. The CWA established the Section 404 program, under which 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" as identified in the CWA. Section 404(g)(1) of the CWA provides states and tribes the option of submitting to the EPA a request to assume administration of a CWA Section 404 program in certain waters within state or tribal jurisdiction.

To assume a Section 404 program, a state or tribe must have authority to administer a permit program that regulates discharges of dredged or fill material consistent within the requirements of the CWA and its implementing regulations at 40 C.F.R. Part 233 and submit to the EPA a request to administer the program. In addition, a state or tribe's program must: (1) be at least as stringent as required by the CWA and its implementing regulations; (2) provide for sufficient public participation; (3) ensure compliance with the *Section 404(b)(l) Guidelines* (40 C.F.R. Part 230), which provide environmental criteria for permit decisions; and (4) have adequate enforcement authority.

Any state that seeks to administer a Section 404 program under 40 C.F.R. Part 233 shall submit to the EPA Regional Administrator: (a) a letter from the Governor of the state requesting program approval; (b) a complete program description, as set forth in 40 C.F.R. § 233.11; (c) an Attorney General's statement, or a statement from the attorney for those state or interstate agencies which have independent legal counsel, as set forth in 40 C.F.R. § 233.12; (d) a Memorandum of Agreement with the EPA Regional Administrator, as set forth in 40 C.F.R. § 233.13; (e) a Memorandum of Agreement with the Secretary of the Army, as set forth in 40 C.F.R. § 233.14 and; (f) copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures.

The EPA's receipt of the request by the State of Florida triggered the EPA's statutory review of the submission. The EPA has reviewed Florida's submission and consistent with 40 C.F.R. § 233.15 has determined that it is a complete request that meets the submittal requirements of 40 C.F.R. § 233.10. This program submission completeness determination does not constitute an evaluation of the merits of the submission. The EPA intends to approve or disapprove the program on or before December 17, 2020.

The EPA Region 4 Administrator, Mary S. Walker signed a notice regarding this matter on September 2, 2020 and the EPA is submitting this notice for publication in the *Federal Register* (FR). The notice is anticipated to be published in the FR in the near future and will: (1) solicit public review and comment on the State program during a 45-day period; (2) announce two public hearings that will be held during the comment period and; (3) solicit public review and comment regarding consultation under the National Historic Preservation Act. The pre-publication notice is available for review and may be accessed at: https://www.epa.gov/aboutepa/about-epa-region-4-southeast.

The State of Florida's program submission will be available through the EPA's docket (Docket No. EPA-HQ-OW-2018-0640) at www.regulations.gov upon publication of this notice in the FR. In the meantime, program request documents posted by the Florida Department of Environmental Protection (FDEP) may be accessed at: https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption. The State of Florida's program submission includes the following: a letter from Florida Governor Ron DeSantis requesting program approval; a complete program description; Florida Department of Environmental Protection General Counsel Justin G. Wolfe's statement; a Memorandum of Agreement with the EPA Region 4 Administrator; a Memorandum of Agreement with the Secretary of the Army; and copies of all applicable Florida statutes and regulations, including those governing applicable Florida administrative procedures.

Due to COVID-19, the EPA anticipates holding virtual public hearings. The dates and times of the virtual public hearings will be published in the FR and will be held not less than 30 days after the date of publication. Registration for the public hearings will be available upon the date of publication in the FR at: https://www.epa.gov/aboutepa/about-epa-region-4-southeast.

In accordance with 36 C.F.R. § 800.2(d), the EPA is providing information and seeking comment on the EPA's potential approval of Florida's request to assume a CWA Section 404 program and any potential effects of such approval on historic properties. The National Historic Preservation Act of 1966, as amended (NHPA), establishes historic preservation as a federal agency policy and provides for the identification and protection of historic properties and resources. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties that are listed or eligible for listing on the National Register of Historic Places and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The EPA has determined that approval of a state program under these provisions is an undertaking pursuant to 36 C.F.R. § 800.16(y), and therefore, in accordance with Section 106 of the NHPA and the ACHP's implementing regulations at 36 C.F.R. part 800, the EPA has initiated consultation regarding the undertaking.

The EPA invites the public to provide comments on the EPA's decision to approve or disapprove the State of Florida's request to assume administration of a CWA Section 404 program, and on the EPA's undertaking under the NHPA and any potential effects on historic properties. Comments must be received on or before forty-five (45) days after the date of publication in the FR. The FR notice will provide instructions for submitting comments. If you wish to submit any comments prior to the publication of the FR notice, you may submit them via email to 404Assumption-FL@epa.gov, or via U.S. Post to:

U.S. EPA Region 4
Water Division, OWSPB
c/o Mr. Kelly Laycock
61 Forsyth St SW
Atlanta, Georgia 30303

If you have any questions regarding this matter, please contact Mr. Kelly Laycock at (404) 562-9262 or 404Assumption-FL@epa.gov.

Sincerely,

/s/

Jeaneanne M. Gettle, Director
Water Division