Florida 404 Assumption Timelines (as of 8-8-2018)

State Rulemaking Process

- The public comment period for FDEP's draft 404 assumption rules ended on July 31.
- Based on significant changes to that FDEP intends to make to their rules, they intend to issue a Notice of Rule Develop during August 2018.
    - The length of the public period is not yet known, but may be 15-days.
- Following consideration of comments received, FDEP will notice their Notice of Proposed Rule (NOPR), potentially as soon as September.
    - NOPR process could end as early as during the month of October, but could potentially be significantly delayed as described below.
    - FDEP could receive a request for a public hearing, which would likely be scheduled within a week following the end of the 21-day period.
    - Outcome of NOPR could be either "No Change" or a "Notice of Change". A "Notice of Change" would trigger restarting the NOPR process.
    - Depending on comments received, the Notice of Change could potentially occur multiple times during the rulemaking process.
    - Florida administrative procedures allow the public to challenge the rule during the NOPR process.
        - If the NOPR is challenged, an Administrative Law Judge with the Department of Administrative Hearings (DOAH) would need to set a hearing, and ultimately issue an order.
- If the NOPR is not challenged and the outcome of the process is "No Change", FDEP would file the final rule with the Secretary of State.
    - The FDEP's rule becomes effective 30 days after the rule is filed with the Secretary of State's office.
    - Florida administrative procedures allow the public to challenge a rule any time after the rule becomes effective, which would lead to an ALJ scheduling a hearing and ultimately issuing an order.
- If the rule is challenged at any time and the DOAH were to issue an order upholding the rule, the public could appeal the decision to the State District Court of Appeals. Under such a scenario, the rule will be effective unless the ALJ or District Court of Appeals issues a stay.
- In summary, **the State's rulemaking process could be completed before the end of October but could also be delayed if it is challenged.**

Submission of a Complete Package

- The State's submission of a complete package may take as much as a month following the completion of the State's rulemaking process.
    - The State will need some time to ensure consistency between their final rules and other parts of the submission package (e.g., Applicant's Handbook, Attorney Generals' statement, description of their program).

EPA's review of a Complete Assumption Package

- The statute provides that EPA has 120 days to review an assumption package.
- The regulations require the EPA to hold a public hearing, and provide 30-days advanced notice of the hearing.
- The regulations require the EPA to provide the public with a 45-day period to review and issue comments on the assumption package.
- The statute requires the EPA ~~to provide~~ to provide copies of the assumption package to the Corps of Engineers, the U.S. Fish and Wildlife Service and the NOAA Fisheries Services within 10 days of receipt from the State.
    - The statute allows the federal agencies up to 90 days to provide the EPA with any comments.
- The EPA must consider any comments received prior to taking action on the assumption package.
- Please note that the above timelines can run concurrently