Message

From: Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]
Sent: 8/23/2018 1:50:22 PM
To: Mcgill, Thomas [Mcgill.Thomas@epa.gov]
CC: Calli, Rosemary [Calli.Rosemary@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Hurld, Kathy [Hurld.Kathy@epa.gov]; Parker, Christopher [Parker.Christopher@epa.gov]; Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]
Subject: RE: draft revised RA issue paper on assumption

My thoughts:

cRITICAL MESSAGE

1. Florida may submit a package requesting state assumption of CWA 404 program administration as early as September 1. For the multiple components of the assumption package that EPA has not yet seen or reviewed in draft, FDEP has indicated that they will share such draft components by August 31. In the event Florida submits a formal package by September 1, EPA staff will have insufficient time to fully review and identify any problems or issues AND THEN IDENTIFY WHEN THE PACKAGE IS COMPLETE, A LEGAL PREREQUISITE.

2. **Legal challenges to the currently proposed state rule could delay Florida's timeline for submittal. Florida staff have indicated they intend to proceed with a Notice of Proposed Rule (NOPR)as the next step in their rulemaking process for 404 assumption. IT IS UNCLEAR WHEN THEY WILL GOT TO NOPR; LAST WORD WAS IN ABOUT TWO WEEKS FROM NOW. WPD staff are not certain at what point during the rulemaking process that Florida will formally submit their 404 assumption package to the EPA.** Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

4. Florida DEP and stakeholders are interested in using ESA § 7 consultation where threatened and endangered species may be impacted, but § 7 is only triggered by federal agency actions. Region 4 staff have drafted potential language to be used in the EPA-FDEP MOA regarding coordination procedures for proposed 404 projects for which there is a reasonable potential for federally-listed species to be impacted. EPA UNDERSTANDS THE STAKEHOLDERS ARE STILL EXPLORING OPTIONS TO ALLOW FOR SECITON 7 CONSULTATION WITHOUT GOING TO THE CORPS.

Considerations:

Components of FDEP's draft assumption package not yet shared with the EPA

1. **FDEP has invited the EPA to meet in Tallahassee during the week of August 29 and 30, where we expect to at least discuss parts of the package that we have not yet seen. [DO WE REALLY EXPECT THIS OR HOPE THIS WILL HAPPEN]**

From: Mcgill, Thomas
Sent: Thursday, August 23, 2018 9:24 AM
To: Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>
Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>
Subject: RE: draft revised RA issue paper on assumption

Attached is a revised version of the RA briefing paper. For those of you that reviewed yesterday's version, I made additional edits to the following sections:

- Key outstanding issues (#4 under Context)
- Critical messages (items #1, 2)
- Components of FDEP's draft assumption package not yet shared with EPA (under Considerations)

From: Mancusi-Ungaro, Philip
Sent: Thursday, August 23, 2018 7:36 AM
To: Mcgill, Thomas <Mcgill.Thomas@epa.gov>
Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>
Subject: Re: draft revised RA issue paper on assumption

Thanks, i will be driving from Atlanta to Charleston next Thursday unless I can get a cheap flight. So Thursday is a wash for me.

Sent from my iPhone

On Aug 23, 2018, at 7:33 AM, Mcgill, Thomas <Mcgill.Thomas@epa.gov> wrote:

> Thanks Phil, I particularly agree about putting more emphasis on the problem with getting a draft package at the end of next week and a formal submission on Sep 1. Not sure yet about specific meeting dates, but left a message with Kristen yesterday.
>
> Sent from my iPhone
>
> On Aug 23, 2018, at 6:59 AM, Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov> wrote:
>
>> A few quick thoughts. I will provide some tweaks when I get to the office.
>>
>> First a related question. Where are we on the Tallahassee trip?
>>
>> I would consider adding some details to the unknown dates on certain action. For example, they had indicated they did not expect to share the balance of their package until 8/31. That creates a problem with a 9/1 package submittal. I had put that in the message to Mary at Jeaneanne's request, but not sure how far that got.
>>
>> They also had indicated they may not go to nopr for 3 weeks. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

On the esa issue, we heard more then once yesterday the stakeholders were still trying to find an alternative path. Clearly Fdep is coordinating with them.

Phil

Sent from my iPhone

On Aug 22, 2018, at 11:25 PM, Mcgill, Thomas <Mcgill.Thomas@epa.gov> wrote:

> Please let me know if you have any comments on the attachment by noon on Thu, Aug 23. The red text in the document reflects changes from the last version of the document. Thanks. Tom
>
> <RA Brief-404 assumption - 8-23-2018.docx>