
Wetlands Permitting - Program Improvements -

Senate Finance Committee
Economic Development and Natural
Resources Subcommittee
November 29, 2006

VWP Program Goals

- Protecting the beneficial uses of rivers and streams and ensuring no net loss of wetland acreage and function
- Improved certainty, consistency and timeliness
- Regulatory efforts prioritized based on environmental risk
- More efficient and streamlined permit process with minimal redundancy

Current Program Structure

- Virginia Water Protection Permit Program (VWP)
 - Permits required for impacts to wetlands and streams
 - General Permits available for impacts up to 2 acres
- CWA 404 Permit Program (USCOE)
 - Permits required for filling wetlands and streams
 - Does not include areas that are not considered navigable or adjacent to navigable streams, does not include Tulloch ditching or other “non-fill” impacts
 - Must obtain state certification/permit to ensure state standards are addressed.
 - Delegated by EPA to USCOE
- SPGP
 - General Permit issued by USCOE that allows state permits to meet federal permitting needs for impacts up to 1 acre
 - USCOE screens all projects over 1/10 acre of impact
 - Pursuit of SPGP required by HB1170, 2000

Promise of SPGP Not Realized

- 420 applications received per year
 - 310 projects of less than ½ acre impacts (DEQ permits, but Corps does historic resource and endangered species reviews)
 - 57 projects of ½-1 acre impacts (DEQ permits, but Corps screens and may require federal permit)
 - 53 projects require both state and federal permits
- Confusion over Corps and DEQ roles
 - pre-application site visit
 - confirmation of delineation
 - Determination of whether impacts have been adequately avoided and minimized
- Conflict between state and federal mitigation preferences

Options

■ 404 Program Delegation

- Does not include tidal waters or many nontidal rivers, streams and wetlands that are considered navigable by federal regulation
- Decision is made by EPA

■ More Robust SPGP

- Increase coverage of size and type of projects that DEQ takes lead on
- Reduce Corps oversight by assuming responsibility for historic resource and federal endangered species review
- Decision is made by COE

■ Improvements to current programs

■ Reversion of some or all authority to USCOE

- HB1496, 2006 – Del. Cosgrove
- Limits to federal jurisdiction means that gaps in protection of wetland resources could occur

Issues

- Efficiency and effectiveness of current program
- Capacity for expanded role by the state
- Staff Retention and Experience
- Cost

Efforts Under Way – Current Program

- DEQ Implementation of Stakeholder Recommendations
 - Stakeholder meetings in July-August
- USCOE – DEQ Joint Process Improvement Effort
 - Minimize redundancy, ensure environmental stewardship
 - Comparability in guidance
 - Conflict resolution
- Stakeholder review of other options
 - First Joint Meeting 11/3

Efforts Under Way – More Robust SPGP

- DEQ requested expansion of SPGP – Spring 2006
 - Request denied by USCOE
- DEQ submitted options for expanding SPGP to USCOE – August 2006
 - Increase caps for coverage
 - Eliminate USCOE screening of projects (DEQ would kick out the projects that don't meet criteria of SPGP)
 - More clearly defined categories where DEQ would issue permits or where USCOE would issue permits (ex, development, road construction, utility crossings, dredging, mining)

Efforts Under Way – 404 Delegation

■ Decision made by EPA

- Reviewed by public and by other federal agencies
- Must demonstrate comparable legal authorities and adequate staff

■ Stakeholder Issues

- Assurances that DEQ will have adequate staff and capacity to implement
- Assurances that state program will maintain level of environmental protection and oversight

■ Anticipate decision on whether to apply formally in Fall 2008

- Legislative changes and additional staff will be needed

Benefits of 404 Delegation

- Streamlined and consolidated permit processes
- Single regulatory agency involved for most decisions
- Greater certainty for permit applicants
- States are more familiar with the resource and with local needs
- States are better able to integrate with other resource protection programs
 - TMDL implementation, watershed planning, open space preservation, local planning efforts
 - Improved focus on wetlands resource management

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