

**From:** Barger, Cindy S CIV USARMY HQDA ASA CW (US) [cindy.s.barger.civ@mail.mil]  
**Sent:** 8/7/2018 3:23:11 PM  
**To:** Green, Eugene [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c2dbb63d76fb41039e3cfa426af1c69e-Green, Eugene]; Strickler, Jacob [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5489cecf7a204a6da8f2d98e81b9b58e-Strickler,]; Collis Adams [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user5d8c4412]; valbrecht@hunton.com; craig\_aubrey@fws.gov; tb4@azdeq.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cce8257ce0364a849ebd0eef472b2d9c-tb4@azdeq.g]; Lauren Boles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user19d68323]; peg.bostwick@aswm.org; dave.davis@deq.virginia.gov; **Ex. 6** tdriscoll@nfudc.org; david.evans@deq.virginia.gov; fishk@michigan.gov; richardgitar@fdirez.com; goldmancarterj@nwf.org; **Ex. 6** william.l.james@usace.army.mil; les.lemm@state.mn.us; Susan.Lockwood@dep.nj.gov; eric.metz@state.or.us; Brabe@umich.edu; Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; gary.setzer@maryland.gov; Szerlog, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23a7f634594b4b58ba4a96e77c1b1aaf-Szerlog, Michael]  
**CC:** Krause, Katherine J CIV USARMY HQDA ASA CW (US) [katherine.j.krause.civ@mail.mil]  
**Subject:** Army Issues Memorandum to Empower States & Tribes in their Permitting Authority  
**Attachments:** smime.p7s

Dear NACEPT Assumable Waters Committee - Please see recent news release below.

Thank you.

Cindy S. Barger  
 Environmental Planner  
 Project Planning and Review  
 Office of the Assistant Secretary of the Army (Civil Works)  
 441 G St. NW, Rm: 6Q91  
 Washington, DC 20014  
 Tel: (202)761-0038  
 Cell: **Ex. 6**

Washington (August 7, 2018) - The U.S. Army today released a memorandum taking initial steps to empower States and tribes in assuming Section 404 permit authority under the Clean Water Act (CWA). In taking on this authority, States and tribes can accelerate job-creating economic development and infrastructure, all while continuing to protect the environment.

Letters are also being sent to all fifty State Governors and the tribal leaders for all the Federally recognized tribes encouraging them to assume this traditional Federal permitting ability.

"This action supports this administration's dedication to infrastructure by providing states and tribes the clarity they need to better balance their environmental protection mission with their economic development goals," said R.D. James, Assistant Secretary of the Army for Civil Works. "In my view, implementing Section 404 in this clear and decisive manner not only adheres to the language of the statute and the intent of Congress when enacting Section 404(g), but it is also in the overall best interest of the Army and the regulated public."

Background: Under Section 404 of the Clean Water Act, a permit is required before dredged or fill material can be discharged into navigable waters or certain wetlands. Activities undertaken using such a permit are infrastructure projects like highways or airports, mining operations, dam or levee construction, or other economic development. To date, only Michigan and New Jersey have assumed administration of the Section 404 program - the Army Corps of Engineers retains permitting authority for the rest of the country.

The guidance memorandum issued by the Assistant Secretary of the Army for Civil Works is consistent with the Assumable Waters Subcommittee's majority view regarding the scope of retained waters under Section 404(g). The memorandum will ensure that the scope of waters that must be retained by USACE under Section 404(g) of the CWA is properly limited to waters that are jurisdictional under Section 10 of the Rivers and Harbors Act of 1899, excluding waters that have only had historical navigation use, and including wetlands adjacent to section 10 waters from the high-water mark of the water landward to an administrative boundary agreed upon by the state or tribe and USACE.

By clarifying what waters States and tribes may assume, the guidance addresses a key barrier to State and tribal assumption. When States and tribes assume the Section 404 permit program, they protect the waters to the same level as the federal government and often increase efficiencies and remove redundancies in permitting processes. Many States have determined that State and tribal implementation of the Section 404 permit program saves substantial money as they are able to incorporate the review process into their existing programs. This action supports infrastructure investment as removal of redundancies in State/tribal and federal reviews will help provide for more timely completion of permit review requirements.

This memorandum expressly does not affect the scope of "waters of the United States" under the CWA.

The memorandum and more information is available at: <https://www.army.mil/asacw/>