



Potential State Assumption of the Clean Water Act Section 404 Dredge and Fill Program

December 4, 2017



- Provide an overview of the 404 program
- Discuss ADEQ's intentions in pursuing assumption of the program, which is currently administered by the US Army Corps of Engineers with oversight by EPA
- Discuss potential pros and cons of state program assumption
- Identify what you, as ADEQ customers and stakeholders, value most in terms of a state administered 404 program and delivery of 404-related products and services.

- Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.
- Requires a permit before dredged or fill material may be discharged into waters of the United States



Federal: The Army Corps of Engineers (COE) currently administers the 404 program and takes over 600 permit actions in Arizona each year.

State: Per CWA Section 401; the state certifies 404 (and other federal) permits to ensure that they will not result in a violation of surface water quality standards (ADEQ's 401 Cert program)

CWA Section 404 is often one of the most lengthy and confusing permitting processes that industry and governments interact with for projects near waterways.



CWA Section 404 (G)(1):

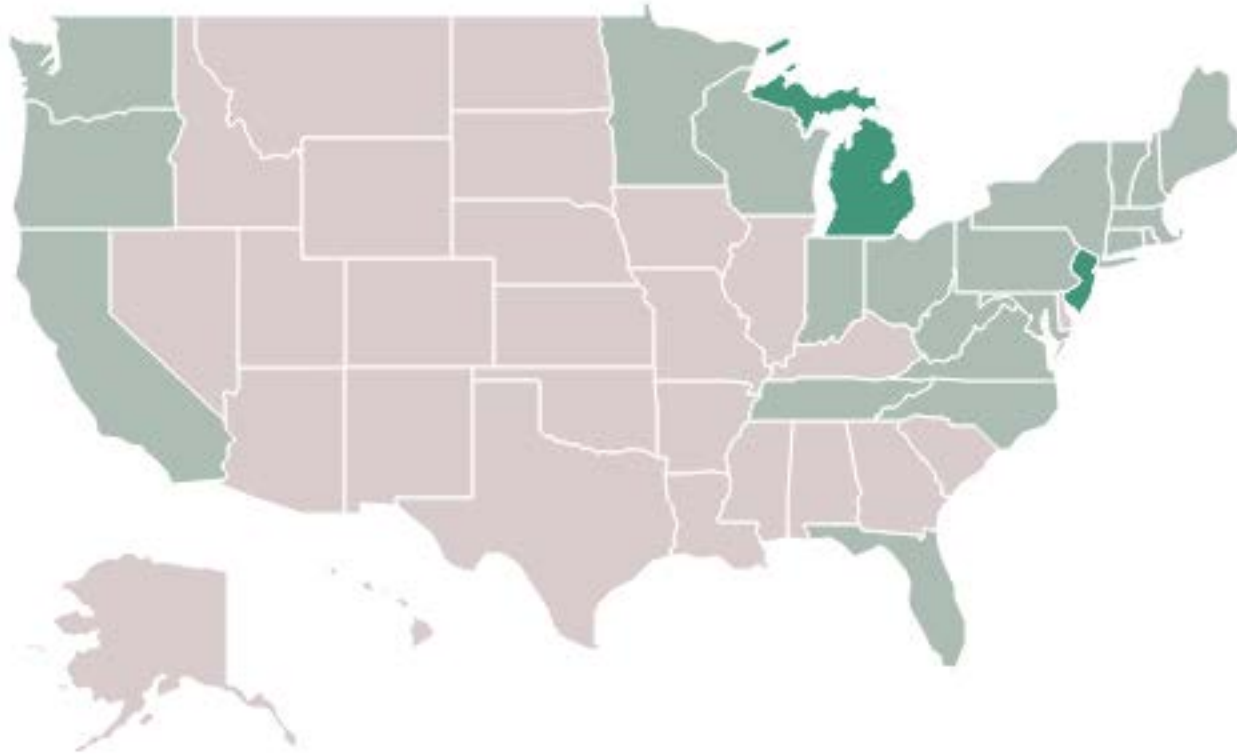
The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters*...within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact.

*excepting certain waters as defined in the full text of the CWA

State assumption of the 404 program allows states to regulate WOTUS with the state, and assume the jurisdictional responsibility to approve, deny, and condition dredge and fill permits

- Exceptions: waters on tribal lands, Section 10 waters (Colorado River)
- Includes conducting jurisdiction determinations for purposes of section 404

The National Picture

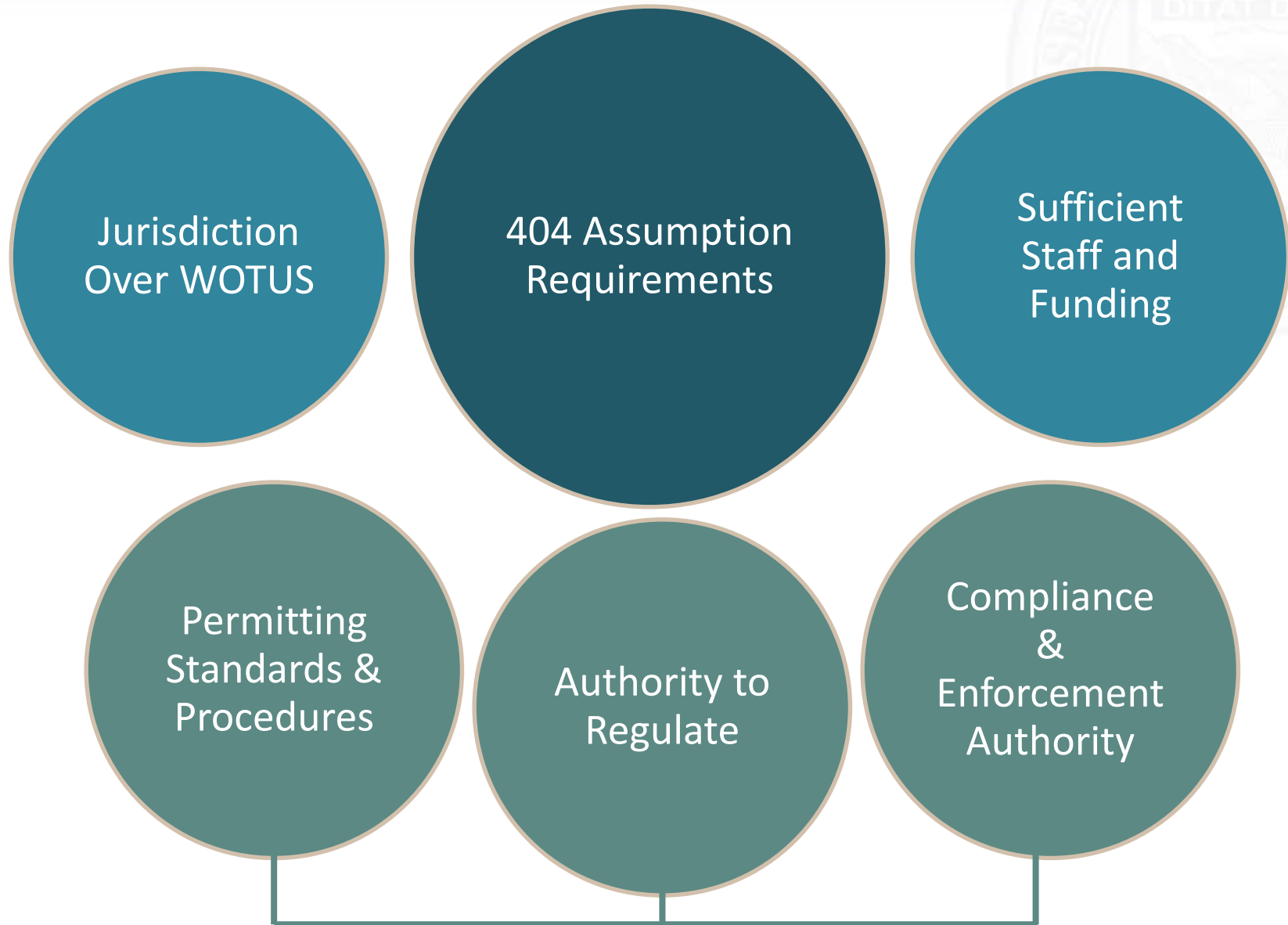


- Corps-administered 404, no state wetland program regulating dredge and fill
- Corps-administered 404 + state wetland program*
- Full assumption of the 404 program

**may have State Programmatic General Permits to eliminate duplication between state wetland permits and 404 permits*

- ADEQ has considered the possibility of assuming 404 in the past based on stakeholder input
 - November 2012: ADEQ hosts Stakeholder meeting to discuss the requirements for assumption and potential benefits
 - Program assumption was researched, but not followed up on due to improvements in Corps processes that alleviated some of the initial stakeholder concerns.
- Most recent interest in potential assumption largely driven by:
 - ADEQ's proven ability to improve permit processing times
 - Lack of clarity on Waters of the US/Desire for consistency across Clean Water Act programs
- Earliest potential assumption date: March 2019

Requirements for Assumption



Greater than or equal to federal law

Pros

ADEQ has already drastically reduced timeframes of state permits

Streamline the process by eliminating need for separate 401 certification

Consistency across CWA programs

Cons

Fee for service model; federal funding not available for state administration of 404

Will require legislation and rulemaking

