



Clean Water Act 404 Assumption Tribal Workgroup Charter

The Arizona Department of Environmental Quality Water Division has formed Workgroups to assist the Department in developing a program to assume Clean Water Act (CWA) 404 permitting for Arizona. Each Workgroup will operate according to a Charter.

In implementing its mission to protect and enhance public health and the environment, ADEQ strives for radical simplicity, nationally recognized technical and operational excellence, and balanced, leading-edge environmental protection. Please allow this vision to guide the Workgroup's recommendations developed under this Charter.

ROLE OF THE CLEAN WATER ACT 404 ASSUMPTION TRIBAL WORKGROUP

The Workgroup will meet regularly to review and discuss the assigned objectives. In addition, they will:

- Through the Chair, provide periodic updates on work status to the CWA 404 Executive Workgroup.
- Report and seek additional input on work products at regularly scheduled stakeholder meetings.
- Provide a white paper with final recommendations by March 21, 2019.
- Once the group has completed the white paper, it will be disbanded.

This Workgroup is not meant to be a substitute for meaningful Tribal Consultation. The Department has begun Tribal Consultation on Clean Water Act (CWA) 404 program assumption.

This is a voluntary advisory workgroup, which will make recommendations to the CWA 404 Executive Workgroup. Neither the group nor individual members will be asked to make decisions on behalf of ADEQ.

MEMBERSHIP

Members of the Workgroup will be chosen by the leadership of the 22 sovereign tribal nations in Arizona. Members are expected to treat each other with mutual courtesy, respect and dignity. If either the ADEQ Water Quality Director or the Workgroup's Chair are concerned about the commitment, behavior, or performance of a Workgroup member, the two shall consult with that member's Tribal leadership to determine appropriate action. Members may withdraw at any time.

LEADERSHIP

At the first meeting, Workgroup members will select a Chair and Vice Chair to lead the group in the absence of the Chair. The Chair will work with ADEQ contracted staff to prepare meeting

agendas and review meeting notes. In addition, the Chair of the Tribal Workgroup will serve as a full member of the Clean Water Act 404 Assumption Executive Workgroup.

Meetings may be facilitated by the Chair or the Workgroup may use a third-party facilitator to assist in keeping the meetings on track to enable the Chair to participate more fully in discussions. Summary meeting notes will be prepared by ADEQ contracted staff.

The Chair is responsible for the following:

- Establishing a Workgroup timeline
- Moving the discussion forward to keep the agenda on time
- Ensuring that the Workgroup remains productive
- Ensuring that all sides of an issue are explored, including hidden or unpopular aspects
- Encourage participation
- Assist the Workgroup in reaching consensus and articulating issues where consensus is not possible
- Assist Workgroup members in preparing the deliverables
- Ensure that Workgroup deadlines are met, and the final report is delivered to ADEQ on schedule

MEETING FORMAT

The format of the meetings will be determined by the Workgroup members. Technical support and information will be provided as needed by ADEQ staff. Only Workgroup members will be notified of meetings. These are working meetings and will not include an open call for public comment. Stakeholder meetings are held periodically so that all stakeholders and public can receive updates on workgroup discussions and provide additional input. Also, agendas and meeting notes will be posted on the ADEQ website.

DECISIONS/CONSENSUS

Ideally, the Workgroup will be able to operate on a consensus basis. If a consensus cannot be reached, to move forward, decisions will be made by a quorum of 50% + 1 of the members (which may include telephonic attendance).

For the sake of the record and to make certain that ADEQ fully understands all sides of the issue, the Chair will ensure that the dissenting voters provide a written explanation of the reasons for disagreement. These explanations will be included in the final deliverable of the Workgroup.

MEETING SCHEDULE

At the first Workgroup meeting, the members will establish a meeting schedule sufficient to complete the objectives by the stated deadline. ADEQ will provide contracted staff to assist in scheduling meetings, preparing agendas and meeting notes, and communication with members. Meeting space will be available at ADEQ. As needed ADEQ will provide WebEx and conference calls for Workgroup meetings.

MEETING ATTENDANCE

ADEQ recognizes and appreciates that Workgroup members are experts in their field and are volunteering their valuable time. It is expected that Workgroup members will participate in good faith throughout the process. Members should make every effort to attend all meetings in person or electronically. Members represent their Nations and bring their special expertise to the table. Full participation is needed to ensure all affiliations and expertise are represented, all viewpoints are voiced, and decisions are reached by consensus to the maximum extent possible. Members may send a “proxy” if they are unable to attend a meeting. The member must fully brief the proxy prior to the meeting. The proxy may not ask the Workgroup to reconsider a previous decision or open new discussions on previous issues. Members who are unable to participate on a consistent basis, after consultation with their Tribal leadership, may be asked to relinquish their position on the Workgroup.

MEDIA REQUESTS

The Workgroup Chair and members may refer any media requests regarding ADEQ’s assumption of CWA § 404 or the Workgroup process to ADEQ’s Public Information Officer, Erin Jordan, should they choose. Each Workgroup member agrees that if contacted by the media or any organization to answer questions or asked to speak at an event, they will not present themselves as representing ADEQ in any way. Contact information for Erin Jordan is as follows:

Phone: 602-771-2215

Email: Jordan.Erin@azdeq.gov

OBJECTIVES

The Workgroup will conduct meetings and work collaboratively to accomplish the following objectives.

- What is the current state?
 - How do the Army Corp of Engineers, Environmental Protection Agency, Arizona Department of Transportation, State Historic Preservation Office, or other Federal or State government entities conduct Tribal Consultation on Clean Water Act Dredge and Fill Permits now?
 - What are the specific benefits and problems of the current state process?
 - Are there opportunities for improvement?
 - How do you currently interact with those entities seeking permits on the Clean Water Act Dredge and Fill program?
 - List the current Memoranda of Understanding between the relevant entities and Nations
- What is the ideal future state?
 - How should ADEQ consult with the Arizona Tribes on 404 permit applications?
- Identify the gaps between the current state and the ideal future state.

- Provide gap closure options to enact the future state (i.e. what entities involved, what agreements, rules, other law may be necessary to enact future state– Note: this does not contemplate modifying federal law)
 - What are the potential benefits to implementing each gap plan option?
 - What are the potential obstacles to implementing each gap plan option?
- In addition to the descriptions, please provide a flow chart or other visual representation of each of the above, if possible.

Recommended Structure for Whitepaper

- Introduction
- Description of current state (including positives and negatives)
- Description of ideal future program under the State assumption.
- Why is this future state ideal?
- Identify and explain the gaps between current state and future state of Arizona’s program
- Identify and explain gap closure options (including explanations and why they’re good options)
 - Brief intro description
 - Table summary of options
 - Separate headings for each option to discuss each fully, including benefits and drawbacks
 - E.g. Option XYZ
 - Description
 - Benefits of Option XYZ (also perhaps compared to other options)
 - Drawbacks/obstacles to each gap option (also perhaps compared to other options)

(Please provide visual representations of the above, where helpful for understanding, especially regarding process)

Please consider and discuss the following items in your workgroup deliberations:

- General Considerations:
 - Methods for a smooth transition to the State program
 - Ensuring quality environmental protection in a timely manner
 - Ensuring clarity, predictability, and certainty for all parties
 - Tools, resources, & processes ADEQ needs to execute the future state (resources in house [e.g. computer programs, information access] &/or externally [e.g. State Historic Preservation Office (SHPO)])
- Specific Considerations:
 - Risks to the environment and cultural/historic resources
 - Risks of disruption to the permit approval/disapproval process
 - Federal Indian Trust Responsibilities
 - Limits on state authority (including A.R.S. § 41-1030 and § 41-1001.01)
 - Other state laws and authority including:
 - Arizona Antiquities Act (1973, amended 1981):

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- A.R.S. § 41-841 – 846 (Arizona State Museum) (pertains to lands owned or controlled by the state)
- Burial Protection Statutes (1990):
 - A.R.S. § 41-865 (private lands) and A.R.S. §41-844 (state, county, city lands) (have been incorporated into 106 MOAs with the Corps)
- State Historic Preservation Act (1982):
 - A.R.S. § 41-861 – 864 (SHPO) (have been incorporated into 106 MOAs with the Corps)
- A.R.S. § 41-2051(C) and ADEQ's current Tribal Consultation Policy