



Meeting Summary

**ADEQ WATER QUALITY DIVISION
CLEAN WATER ACT § 404
STAKEHOLDER MEETING #2 SUMMARY**

DATE: June 7, 2018
TIME: 1:30-4:30 p.m.
LOCATION: Pima County Joel D. Valdez Main Library, Lower Level Meeting Room
101 N. Stone Ave., Tucson

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggione
Mindi Cross
Andy Koester
Krista Osterberg
Heidi Welborn

ADDITIONAL ATTENDEES

Alexandria Evans, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available online and includes:

- Welcome
- Review Agenda and Introductions
- Overview
- Next Steps
- Pros and Cons of Program Assumption
- Opportunities to Improve and Benefits of Existing U.S. Corps Process
- Issues for Consideration
- Evaluation

WELCOME

Water Quality Division Director Trevor Baggione welcomed the group. He noted his appreciation for the stakeholder response and participation as the department develops the new program.

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn greeted attendees and explained the meeting format. Approximately 100 stakeholders participated, with 81 attending in person and 19 attending via WebEx or conference call. Some online stakeholders may not have identified themselves.

OVERVIEW AND NEXT STEPS

Krista Osterberg, ADEQ, presented an overview: Clean Water Act § 404 Assumption. The presentation is available online at:

http://static.azdeq.gov/wqd/rulemaking/404_assumption_presentation_060618.pdf.

Highlights of topics included:

- What is Clean Water Act § 404 Dredge and Fill?
- What does “assumption” mean?
- 404 Assumption requirements
- Congressional intent and national program assumption
- CWA Regulation in Arizona
- Arizona, the assumption process, and statutory authority
- Timeline
- Issues for consideration in state assumption

PROS AND CONS OF PROGRAM ASSUMPTION

Gunn led the attendees through a series of interactive exercises. Participants were asked to list the pros and cons of ADEQ assuming the 404 program. Each table then identified their top three pros and cons and reported to the full group.

Comments provided from each table are noted below. A complete list of individual worksheet comments is available separately.

Exercise A: Our table’s top three pros and cons

Pros

- Arizona controls Arizona issues
- Arizona specific processes with opportunity for local knowledge of ephemeral riparian areas
- Arizona conditions methodology potentially taking advantage of local knowledge
- Better consistency between 402 & 404
- Better local understanding of environmental, social conditions and appropriate responses
- Consistency in permitting process
- Consolidation of all CWA programs at state level
- Could be more reflective of local needs
- Create new jobs
- EPA still has veto authority
- Greater opportunity for stakeholder input
- If worried about water quality, better oversight?
- May be able to be more “Arizona specific” conditions focused
- May be less bureaucratic
- May speed up permit processing time
- More specific to AZ because of local knowledge
- None

- Possible quicker review times with more accessibility
- Possible reduction in redundant processes between USACOE & ADEQ
- Possible synergy of state water quality program 401 & 402 jurisdictional and potential
- Potential expedited process
- Potential organizational consistency under our roof (401, 402, 404)
- Potential vague to streamline CWA admin for state (but should know how much can be streamlined before making decision on “potential”)
- Potentially smoother process
- Program dovetail
- Speed up process
- State autonomy
- State consolidates processes (CWA 401, 402, 404)
- User input benefits citizens (user = citizens)

Cons

- 404 (b)(1) applied to nationwide permits for section ZESA and Section 106 HPT instead of individual only. Increase costs to permit
- A COE by virtue of size is not so easily swayed by political whim and regional pressures. By virtue of size, less susceptible to outside \$, pressure than a smaller state agency might have. (more potential for corruption)
- Abuse of fee structure & very expensive
- ADEQ does not have comparable expertise developed over years
- ADEQ doesn't have the expertise
- ADEQ has no experience in NEPA, NHPA, ESA, or other programs that are currently used by the federal program
- ADEQ will face same challenges (reinventing the wheel)
- Burden of cost will be assumed by applicants
- Can't be any more protective than current rules
- Change to state control might look the same but not actually be equal to what is done by feds
- Concern about whether state of Arizona can handle this (funding, expertise, staffing)
- Consultations
- Corps has been operating this program forever. ADEQ will be starting from scratch. Very unlikely proposed permit fees would cover program. If the fees don't cover the program and state doesn't appropriate funds, what happens to program?
- Cost to administer to state applicants and taxpayers
- Cost to run program – where is money and if fees are too high where is the overage
- Creation of an insular situation against other states
- Destruction of habitable property
- Eliminate federal nexus including HEPA
- EPA & USACOE visit sites before issuing permits, ADEQ does not for air and water. Probably due to insufficient funds
- EPA to control could adversely affect
- ESA consultation

- Fees vs. free and state underfunded, understaffed, not getting better, sweeping funds from one to another to now, why add?
- Funding through permit fees could generate irresponsible permitting
- High initial and perpetual costs
- Increased costs
- Inherent litigations = CWA would increase to the state
- Lack of ADEQ experience in this area:
 - Diversity
 - Depth
 - Lack of interest in environment protection
- Lack of expertise of ADEQ staff
- Likelihood of constant state of understaffing for ADEQ
- Litigation cost increase
- Lost dedicated reviewer for Pima County; loss of regional permits
- More subject to personal connections and political influence
- No clear definition of WOTUS
- No current ADEQ experience
- No ESA oversight; another reinvention would be required
- No NEPA oversight and decreased public input; loss of objectivity
- Politics would play a greater role
- Potential conflicts regarding charging fees
- Potential for much longer process due to duplication with EPA & Corps
- Potential loses of public citizen oversight
- Program will almost certainly cost more than anticipated; corps has a deep bench that Arizona does not
- Shifts burden of section 10 to permit applicant
- Specific user groups (e.g. nationwide permits) might be less able to secure permits under fee for service model
- State Cuts could affect program
- Too much uncertainty regarding jurisdictional determinations and assumable waters
- Uncertainty of ESA sec 106
- Uncertainty on length of time of permitting process with state vs. feds
- Uncertainty that ADEQ has adequate resources to effectively administer this program.
- Uncertain/increased litigation time/costs due to uncertain appeal process
 - Who bears the cost?
- Working relationship with tribes is not good
- WOTUS definitions

OPPORTUNITIES TO IMPROVE AND BENEFITS OF EXISTING US CORPS PROCESS

Gunn asked participants to consider the US Corps of Engineers process and consider what works well and what could be improved. Each table then collected their top three things to keep and three opportunities for improvement and reported to the full group.

Comments provided from each table are noted below. A complete list of individual worksheet comments is available separately.

Exercise B: Our table's top three pluses and deltas of the current process

Things to Keep

- Active facilitation between mitigation providers and IRT
- Clear guidance
- COE personnel visit projects
- Compensatory Mitigation
- Compensatory Mitigation
- Coordinated tribal consultation, understanding of NHPA and development of section 106 MOA's
- Corps can act on citizen complaints
- Current consistency in impact determination
- Current ID process is good
- Dedicated Reviewer
- Does not require pay to play
- Excellent technical & other support
- Federal government has a trust responsibility to tribes, state does not. Therefore, waters that tribes have interest in should not go into state program.
- General Individual Permit Application: Existing RGP – want to keep
- General Individual Permit Application: NWP apply to Arizona should be kept
- Getting credit for improvement of site after project completion
- Good list of what looking for
- ID process: Clear understanding of submittal requirements
- ID process: Consistent in determination
- ID process: Corps liaison helps keep it timely
- ID's waters more broadly
- In lieu fee program
- Interagency Coordination: Continue coordination with agencies re: ESA, OAW
- Interagency Coordination: USACOE has good established rapport with other agencies
- Intersection of 404(b)(1) guidelines including public interest test with NEPA
- JD consultation and communication is great with tribes
- JD: Empirical established procedures
- Keep federal standards for standing
- Keep programmatic nationwide permits
- Keep section 7 consult
- Keeping the autonomy and independence of the reviewing agency (i.e. corps)
- Long-term civil servants not subject to political pressure
- Maintain existing environmental reviews NEPA/ESA/Cultural
- Nationwide permit process works well
- No fees
- Regional permits
- Retain general permits and don't excessively broaden scope

- Retain the same level of expertise and enforcement staff that is currently available in the Corps.
- Retain the same level of public inspect currently available via NEPA 106
- Significant nexus
- Staff available when needed
- Tech Review: Use scientists & other experts when necessary, bring them as consultants
- Technical review
- The public review process for individual permits
- Transparent public process
- Tribal process is believed to be excellent
- Working with knowledgeable personnel
- Works well with tribes & other special groups

Opportunities for Improvement

- A review process that is consistent and replicable
- Allow public to ask for ID
- Arizona should consider surface & groundwater as one
- Bank>In Lieu>Permittee
- Better assessment/definition of WOTUS to dry washes
- Better compulsory mitigation (compensation should stay in watershed)
- Better consistency how individuals interpret what a water of US is (have seen significant difference between AZ & NM)
- Better snacks (including gluten free)
- Clarify obligation evaluate off-site alternatives
- Consistency in what is or isn't W-US
- Consistent methodology for functional assessment for ephemeral systems in all biomes - all related to consistency in compensatory mitigation
- Corps should respond more quickly to citizen complaints
- Create state version of NEPA
- Developing alternatives under section 404 (b)(1)
- Expand mitigation bank program
- Follow FED mitigation prioritization guidelines closely
- Functional assessment tool that works regionally (i.e. w/ephemeral waters)
- Improve checklists and forms make them specific to Arizona
- Improve consistency of mitigation ration worksheet for - impact > mitigation valuation
- Improving timeliness and certainty of the jurisdictional determination process
- Include all Arizona waters should be jurisdictional by default
- Increase triggers for individual permits
- Increased resources for scientific analysis regarding effectiveness of mitigation
- Lack of in kind mitigation options for ephemeral drainage
- Major issue is lack of adequate resources for agency capacity, thus hampering consultation
- Mitigation could stay within projects watershed
- More definite of SNA

- More technical input
- Nationwide permit approval could be faster for private industry
- Need for functional assessment
- Need local specialist
- Public data base w/ maps for jurisdiction rules
- Read everything EPA that is submitted before making decisions
- Reduce general permits
- Some of the nationwide permits need to be revisited and narrowed or refined
- State wants to include ephemeral intermittent retrieval
- Treating expertise of non-state specialists (some with more expertise than the state) as valid, or certifiable
- Uncertainty in juridical determination
- USCOE allows mitigation in different areas from that which will be adversely affected. Should not.
- Water resource development act

ISSUES FOR CONSIDERATION

Gunn asked attendees to consider major steps and roadblocks in ADEQ's path to assumption of the section 404 program, and areas of focus to consider in developing the program and rule. A complete list of comments is available separately.

Exercise C: What other issues need to be addressed during rulemaking?

Highlights of comments included:

- 404 is only section state does not administer at this point.
- A good system for consultation should be implemented.
- ADEQ needs a dedicated tribal liaison in this process separate and apart from the stakeholder process. How will ADEQ fund this position?
- ADEQ should consider simplification of the JD process for ephemeral drainages, perhaps start with all ephemeral drainages above a certain elevation, or distance from a town, or of less than a certain size, just be out of jurisdiction, and put those into a G.I.S. as a starting point.
- All issues related to definitions, decisions, and rulemaking need to be more transparent to stakeholders.
- Cultural resources protections and tribal consultation.
- Define how mitigation credits will be assigned (ratios).
- Develop state NEPA (like California).
- Do a cost burden analysis to tax payers + conflict of interest with pay to play program.
- Does the state have to power to handle border issues?
- Has anyone in ADEQ ever completed the 404(b)(1) process? Try it! High costs!
- How to insulate all ADEQ staff from political pressure and retain long-term.
- How will ADEQ deal with ESA, NHPA? Will they consult on these?
- How will consistency increased efficiency be achieved if using corps "model"?

- How will existing permits from the ACOE be transferred to ADEQ? Specifically renewal of those permits.
- How will nationwide permit process be treated?
- How will you fund litigation/lawsuit defense?
- I am very concerned about no NEPA input from the public.
- I do not have faith in the Ducey administration to support this assumption of primacy adequately.
- If fees will be used, restoration projects should be exempt from fees.
- Include default trigger that states return to federal authority should state agency no longer be able to fulfill responsibility.
- Interstate projects.
- Just the observation that my time for restoration project 404 permitting is less than 60 days so I have no lost opportunity costs, but I will now have to pay a fee. Will you waive fees for restoration projects and have an increasing fee schedule the larger the destructive project is?
- NEPA/EPA/Section 106 needs to be incorporated into ADEQ permitting process if it is assumed.
- Please develop at least an estimate of potential fees.
- Should assumption occur, please do not engage in regulatory creep, i.e. adopt upland mitigation beyond what is currently required.
- The NWP program needs to be kept.
- What happens to existing regional general permits?
- What happens when federal regulations get more stringent?
- Who will accept, process, and investigate the Report of Unauthorized Activity forms? Will there be regional regulators to do site visits, as is the current situation? Will there be a fee for processing these forms, and if not, who will fund these investigations?
- Will ADEQ refund or follow applications from cradle to grave? I.e. will DEQ continue to follow applications if EPA disagrees with or vetoes an application?
- Will existing section 214 WROA position be eliminated?
- Will permit timeframes increase as ADEQ assumes more permitting workloads & increased application numbers?

EVALUATION

Gunn encouraged stakeholders to complete meeting evaluations. The evaluation was also available online through June 14. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

Maria Altemus	EcoPlan Associates, Inc.
Matthew Bailey	Tucson Electric Power Company
Sarah Baxter	U. S. Forest Service
Dinah Bear	(did not provide)
Laura Berglan	Pascua Yaqui Tribe
Raquel Birdnan	(did not provide)
Tray Bogardus	Presidio Engineering
Sheila Bowen	Metropolitan Domestic Water Improvement District
Rion Bowers	Bowers Environmental Consulting
Jon Bryant Baker	BHP
Michael Bryce	(did not provide)
Ben Buehler Garcia	Southern Arizona Homebuilder's Association
Mike Cabrera	Pima County Flood Control
Samantha Carlson	(did not provide)
Robert Carranza	(did not provide)
Jennifer Clarke	(did not provide)
Chris Connor	City of Chandler
Paul David	Graham County
Sallie Diebolt	U.S. Army Corps of Engineers
Mary Jane Dillard	Town of Sahuarita
Dave Eaker	(did not provide)
Peter Else	Lower San Pedro Watershed Alliance
Barbara Escobar	Pima County
Roger Featherstone	Arizona Mining Reform Coalition
Colleen Filippone	National Park Service
Tim Flood	ADHS
Mario Flores	City of Bisbee
JE Fuller	(did not provide)
Tricia Gerrodette	(did not provide)
Nicole Gillett	Tucson Audubon Society
Stephen Glass	Gault Group, LLC
Eddie Gonzales	City of Douglas
Rick Grinnell	Southern Arizona Business Coalition
Kevin Grove	U.S. Army Corps of Engineers
Ned Hall	Freeport-McMoRan Inc.

Neal Hanna	(did not provide)
Trevor Hare	Watershed Management Group
Gayle Hartmann	(did not provide)
Brian Henderson	(did not provide)
Peggy Hendrickson	(did not provide)
Cori Hoag	(did not provide)
Jonathan Horst	Tucson Audubon Society
Paul Iezzi	Rick Engineering Co.
Sam Jarjice	(did not provide)
Nancy Johannismeyer	ASARCO
Tim Jordan	Tierra Right of Way Services
Laurie Jurs	(did not provide)
Fred Kane	(did not provide)
Robert Kellock	(did not provide)
Hesston Klenk	Resolution Copper
Tom Klimas	WestLand Resources, Inc.
Theresa Knoblock	Tierra Right of Way Services
Alex Kouvel	BHNA
Anna Lands	(did not provide)
Heidi Lasham	(did not provide)
Brian Lindenlaub	WestLand Resources, Inc.
Shawn Lowery	Arizona Game and Fish Department
Amanda McGennis	Arizona Chapter Associated General Contractors
David McIntyre	McIntyre Environmental LLC
Roger McManus	(did not provide)
Dan Meyer	(did not provide)
Cyrus Miller	JE Fuller
Melanie Mizell	Community Water Coalition
Mark Murphy	(did not provide)
Kell Olson	Pima County Attorney's Office
Johnny Pappas	AMI
Vincent Pawlowski	(did not provide)
Roberta Pederson	(did not provide)
John Perry	(did not provide)
Claire Phillips	WestLand Resources, Inc.
Betsi Phoebus	Jacobs
Karen Piegorsch	(did not provide)

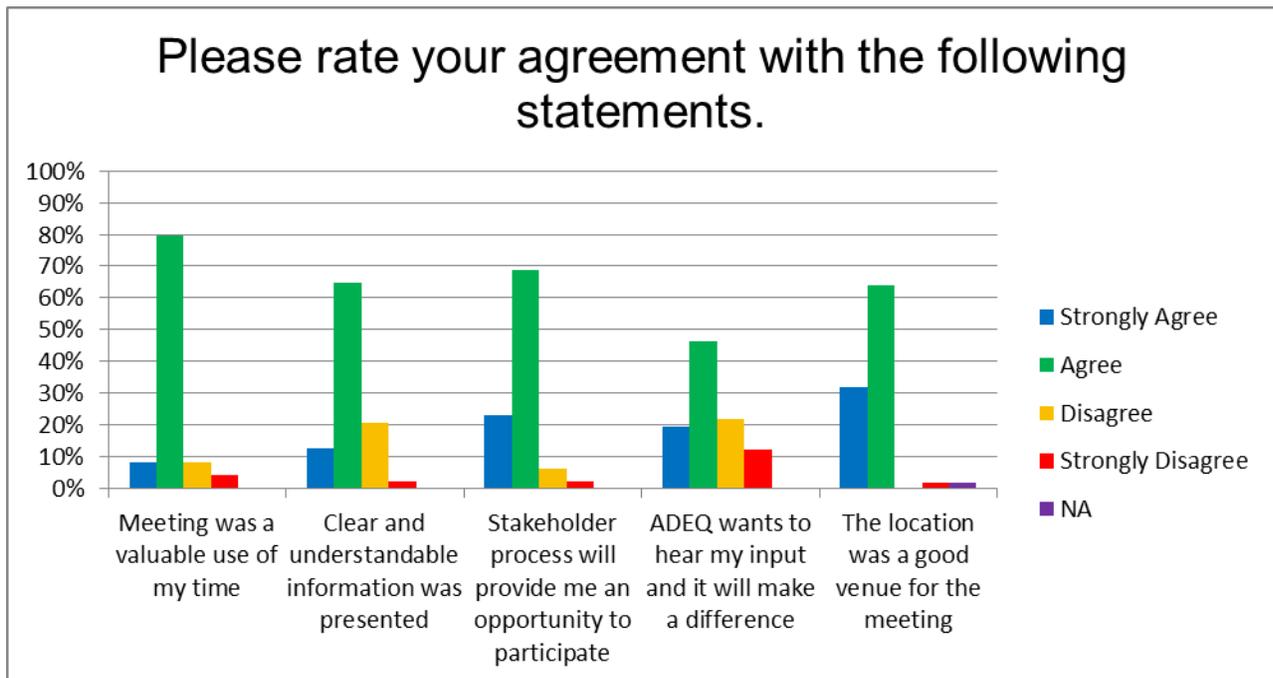
Karla Reeve Wise	PDEQ
Steve Reutar	PC RWRD
Sarah Richman	Arizona Mining
Scott Robidoux	Tucson Airport Authority
Larry Robinson	RFCD
Pat Rorex	(did not provide)
Madeline Ryder	Sky Island Alliance
Monica Salguero	ASARCO
Catherine Schladweiler	(did not provide)
Carolyn Shafer	Patagonia Area Resource Alliance
Eric Shepp	Pima County
Jon Sherrill	City of Chandler
Suzanne Shields	Pima County Regional Flood Control District
Carol Shinsky	(did not provide)
Greg Shisky	(did not provide)
Peter Steere	Tohono O'odham Nation
Paul Strautum	(did not provide)
Dave Tenpenny	(did not provide)
Michael Teran	City of Bisbee
Sue (unknown)	(did not provide)
Ron Van Ommeren	EcoPlan Associates, Inc.
Lindsay Vicini	Rick Engineering Co.
Mary Ellen Walsh	State Historic Preservation Office
Bruce Whitehouse	(did not provide)
Sandy Whitehouse	(did not provide)
Chuck Woodford	(did not provide)
Duane Yantorno	ASARCO
Sam Ziegler	EPA Region 9

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Fifty-two stakeholders returned meeting evaluation surveys. Some stakeholders did not answer all questions.

Attendees were asked to rate their agreement (Strongly Agree, Agree, Disagree, Strongly Disagree, Not Apply) with the following statements:

- Meeting was a valuable use of my time
- Clear and understandable information was presented
- Stakeholder process will provide me an opportunity to participate
- ADEQ wants to hear my input and it will make a difference
- The location was a good venue for the meeting



What was the best thing about today?

- Allowed everyone to provide input.
- Awareness of problems, process, how little we know.
- Better understanding of the scope and the limitations of this process.
- Discussions and collaborations benefit various stakeholders, skewed at opposite sides of the spectrum of their views.
- Facility.
- Good involvement of all participants. ADEQ seems truly interested in all positions.
- Got people to focus on this bad idea and provided some basic information and obtained some basic reactions.
- Great groups of people at table.
- Having our voice heard.
- Hearing from ADEQ staff and hearing concerns of others.
- How professional the ADEQ staff was (especially with the harsher voices in the room).

- I learned new things from others at the table who work specifically in these fields.
- Knowledge of 404.
- Learned a lot but doubtful. Organization exercise excellent.
- Learned more about issues at hand.
- Learned more about the potential scope of what ADEQ is trying to do w/assuming CWA.
- Learning about the delta.
- Learning about the process.
- Learning others' views.
- Meeting other stakeholders and having the opportunity to interact with people I wouldn't have otherwise.
- Meeting people who have different standpoints and similar viewpoints.
- Not clear how this process will actually be incorporated into law-making.
- Nothing. I'm at a table mostly with "citizens" who know nothing about the actual 404 regulatory process.
- Opportunity to share position, concerns.
- Participants diverse at my table.
- Provided some info about timeline for this process.
- Stakeholder engagement.
- The ADEQ admitted twice that they are going for state primacy now mainly because of encouragement from a federal executive administration that is openly trying to undermine environmental protection policies.
- Venue and participants.

What should be changed for future meetings?

- A short summary of the program's main elements should be included in the handouts. Neither agree nor disagree that clear and understandable information was presented.
- ADEQ is NOT ready.
- Asking questions that are more appropriate for people that have experience in the permitting process. Insufficient details that are critical, e.g. fee levels.
- Don't let politics into the meeting! Provide summary of info to cover shortcomings reflected in meeting evaluations before the meeting so interested folk can prepare better.
- Fine as is; not sure how much of a difference hearing my input will make.
- Have microphones available for questions.
- Information presented was not clear and understandable for rookies! Keep similar attendees with similar knowledge base at same table. That means regulatory experienced people will have different issues than people on streets with zero experience with this permit. You cannot teach someone what/how 404's work if they have never done it. It's a skilled job!
- It's obvious that the facilitator is neither impartial nor un-biased. To be credible a facilitator has to be both. The facilitator's sole function is to seek participation, clarify statements and meaning when necessary, summarize inputs frequently, etc. in no case should the facilitator attempt to guide, structure, slant or comment on inputs. Most

organizations that earnestly seek public views ensure facilitators 'have no dog in the fight.'

- Location okay, not great. And let me sit next to my husband!
- Location should have better access.
- More informative.
- More publicity about its purpose and nature.
- Need morning meeting time instead of afternoon meeting.
- Neither agree nor disagree AQEQ wants to hear my input and it will make a difference.
- Neither agree nor disagree that meeting was a valuable use of my time. Meeting too long, too many questions upfront. Consider a question holding process til the end. Too many people have their own agenda beyond the scope of today's meeting.
- NOT bottled water. Healthier snacks. But thanks!
- Not confident AQEQ wants to hear my input and it will make a difference.
- PA systems for the soft spoken and hard-of-hearing.
- Remains to be seen if AQEQ wants to hear my input and it will make a difference.
- Snacks w/o sugar! Veggies, tortilla chips, etc.
- So short time frames for amount of questions. Not sure my input will make a difference.
- Some of the information provided was not accurate. The 401 (b) guidelines are not the functional equivalent of NEPA. Please make sure that ADEQ speakers know what they are talking about and get back to people with accurate answers.
- The meeting was well-organized. I learned a lot.
- The round table format prolonged the meeting.
- The timing of the meeting should accommodate citizens who work full-time. More details must be provided regarding the total costs of conducting the entire 404 permit and enforcement program, including historical litigation figures, staffing for permits, staffing for enforcement, technical review staffing, etc.
- Unclear if ADEQ wants to hear my input and it will make a difference.
- Very difficult to feel issues are being heard with such a mixed group, (public, agencies, consultants) would be nice to have targeted meetings. Unclear how this feedback will be used.
- Would be good to provide handout with definition of terms.
- Would like reports from New Jersey and Michigan.
- You need a better facilitator; I don't think the exercises were a good method to gather input.