



Significant Degradation Technical Working Group Charter

The Arizona Department of Environmental Quality Water Division has formed Technical Working Groups (TWGs) to assist the Department in developing a program to assume Clean Water Act (CWA) 404 permitting for Arizona. Each TWG will operate according to this 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 PANEL

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

- Provide monthly updates on work status to the CWA 404 Executive Committee.
- Report and seek additional input on work products at regularly scheduled stakeholder meetings.
- Provide a white paper with final recommendations by December 20, 2018.
- Once the group has completed the white paper it will be disbanded.

The TWG is a voluntary working group which will make recommendations to the CWA 404 Executive Committee. Neither the group nor individual members will be asked to make decisions on behalf of ADEQ.

MEMBERSHIP

Members of the TWG were chosen from more than 115 stakeholders who voluntarily applied to assist ADEQ in developing the CWA 404 Program. Membership selections were made by ADEQ based on the technical areas of expertise, geographic and special interest diversity and willingness to participate.

This is a voluntary advisory working group. Members are expected to treat each other with mutual courtesy, respect and dignity. If either the ADEQ Water Quality Director or the chair are concerned about the commitment, behavior, or performance of a workgroup member, the two shall consult to determine appropriate action, which may include replacement of the member. Members may withdraw at any time.

LEADERSHIP

ADEQ selected a Chair from the stakeholder applicants. The Chair will be responsible for providing updates to the CWA 404 Executive Committee and working with ADEQ contracted

staff to prepare meeting agendas. At the first meeting, TWG members will select a Vice Chair to lead the group in the absence of the Chair.

Meetings may be facilitated by the Chair or the TWG may use a third-party facilitator to assist in keeping the meetings on track to enable the Chair to participate more fully in technical 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 TWG members. Technical support and information will be provided as needed by ADEQ staff. Only TWG members will be notified of work group meetings. These are working meetings and will not include an open call for public comment. Stakeholder meetings will be held in the fall so that all stakeholders and public can receive updates on work group discussions and provide additional input. Also, TWG 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, decision will be 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 TWG 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 TWG 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 affiliations 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 TWG to reconsider a previous decision or open new discussions on previous issues. Members who are unable to participate on a consistent basis may be asked to relinquish their position on the TWG.

MEDIA REQUESTS

The Technical Working Group 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

COORDINATION WITH OTHER STATES

ADEQ hopes that workgroup members will research programs in other states as a part of their analyses. If there are questions that workgroup members must ask these states (e.g. New Jersey or Michigan), please confer with ADEQ staff to coordinate communication with said states.

OBJECTIVES

The Technical Working Group will conduct meetings and work collaboratively to accomplish the following objectives.

SIGNIFICANT DEGRADATION & ALTERNATIVES ANALYSIS & MINIMIZATION WORK GROUP OBJECTIVES

Questions:

- What is the current state?
 - What are the specific benefits and problems of the current state?
- What is the ideal future State for implementing the 404 process? Why is this the ideal future state?

- Note: Future state recommendations should provide equivalent protection of WOTUS as the existing Corps program.
- 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)
 - Why are each the best options?
 - What are the potential obstacles to implementing each gap plan options?
- In addition to the descriptions, please provide a flow chart or other visual representation of each of the above, if possible.

Recommended Structure:

- Introduction
- Description of current state (including positives and negatives)
- Description of ideal future program under the State/elements (& why is this ideal?)
- Identify and explain the gaps between current state and future state Arizona 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:
 - Existing State authority and its limits (including A.R.S. § 41-1030 and A.R.S. § 41-1001.01)
 - Ensuring clarity, predictability, and certainty for all parties
 - Methods for a smooth transition to the State program
 - Ensuring quality environmental protection in a timely manner in the future state
 - Tools, resources, & processes ADEQ needs to effectuate program (resources in house [e.g. computer programs, information access] &/or externally [e.g. AZ Game and Fish])
 - Tools or information ADEQ needs from permittees
 - Tools or resources permittees need from ADEQ
 - New Jersey and Michigan processes as these are the only two states with approved 404 programs

- Federal nexus project scope v. scope of review under state authority
- How to ensure adequate environmental review when NEPA is not required
- General Permits and Individual permits
- Risks to the environment
- Risk to the permit approval/disapproval process
- Litigation risks for all parties
- Future Corps and EPA involvement
- Specific Considerations:
 - NEPA (42 U.S.C. § 4321 et seq.) and applicable implementing and related rules, including: 33 CFR Part 325, Appendix B; 33 CFR § 320.4; 33 CFR Part 230; and 40 CFR § 1500 et seq., and any applicable executive orders
 - NHPA (16 U.S.C. 470 et seq.) and implementing and related rules, including: 36 CFR Part 63; 33 CFR Part 325, Appendix C; and 33 CFR § 320.4
 - For Alternatives Analysis & Minimization:
 - Rework typically required for least environmentally damaging practicable alternative (LEDPA) and project purpose proposals in applications
 - Potential to clarify, in rule, the LEDPA (including project purpose) and minimization requirements (40 CFR 230.10(a) & (d)) while aligning with federal case law and interpretations
 - For Significant Degradation:
 - Common delays or pitfalls in the significant degradation analysis
 - Potential to clarify the rules and make their outcomes more predictable
 - Ways to ensure that the applicant and the regulator understand what is needed in an application to allow for accurate and swift processing of the information to determine if the project has minimized or avoided impacts to the greatest extent possible, and move towards compensatory mitigation discussions, if possible
 - How to account for any degradation according to factors required to be evaluated but for which compensatory mitigation would not provide remedy (e.g. state preserves in 40 CFR 230.54)