



Kathy Hurl
US EPA Headquarters



ASSOCIATION OF STATE WETLAND MANAGERS
ASSUMPTION WEBINAR SERIES

MARCH 16, 2021

PRESENTED BY

BRENDA ZOLLITSCH
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MANAGERS

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INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

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FINDINGS FROM ASWM'S MULTI-YEAR CLEAN WATER ACT SECTION 404 ASSUMPTION PROJECT



PROJECT INFORMATION

ASSUMPTION BASICS

THE COMPLETE ASSUMPTION
PACKAGE

PROJECT PRODUCTS

WHERE TO LEARN MORE



ASWM ASSUMPTION PROJECT PURPOSE

This project was designed to:

- ✓ Encourage the development of complete assumption applications that meet program requirements,
- ✓ Allow states to capitalize on the success of other states
- ✓ Help states plan sustainable funding strategies for assuming the §404 program
- ✓ Expand the resources available to states
- ✓ Avoid duplication in the permitting process
- ✓ Protect their watersheds and aquatic ecosystems, including wetlands



ASSUMPTION PROJECT ELEMENTS:

To help states become better equipped to explore and/or apply for assumption, ASWM will work with a national project workgroup to:

IDENTIFY BEST PRACTICES FOR SUBMITTING COMPLETE ASSUMPTION PACKAGES

Moderate assumption discussions to create an ongoing peer network of states interested in assumption

Identify best practices/principles for conducting federal consistency analyses

Identify best practices/principles for determining which waters within state boundaries are assumable by the state

Deliver webinars and in-person trainings on assumption topics

ASWM ASSUMPTION PROJECT A NATIONAL DIALOGUE

- Two+ years of monthly dialogues
- 32 project workgroup members
- Those states considering, exploring or pursuing assumption and other interested parties
- Project work followed by a national-level dialogue on a specific assumption topic

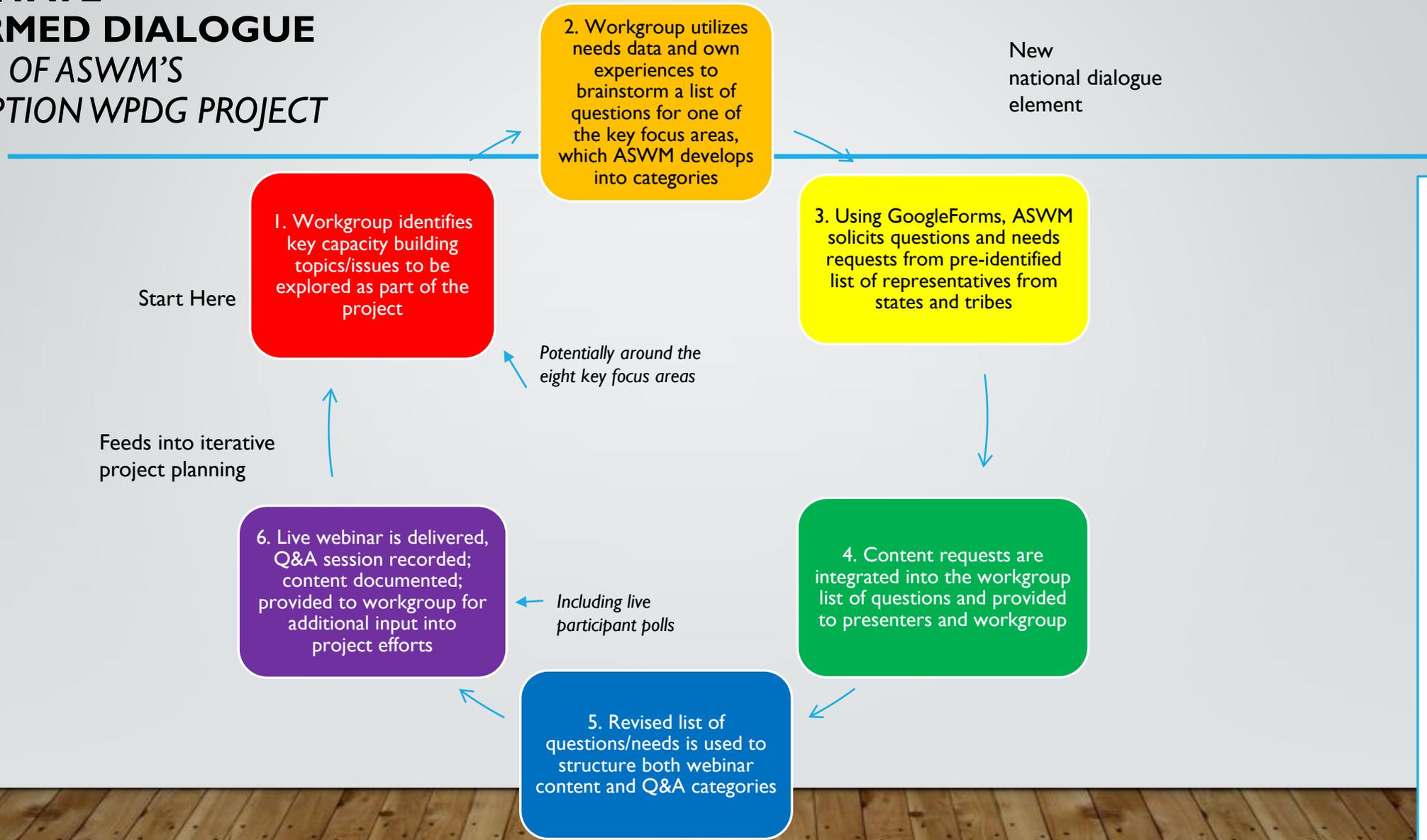




SPECIAL THANK YOU FOR PARTICIPATING STATES EXPLORING ASSUMPTION

- Assumed States:
 - Michigan (On workgroup, webinar presenters)
 - New Jersey (Webinar presenters)
- Assumed During Project
 - Florida (On workgroup, webinar presenters)
- Exploring/Pursuing Assumption
 - Oregon (On workgroup, webinar presenters)
 - Minnesota (On workgroup, webinar presenters)
 - Nebraska (On workgroup, webinar presenters)
 - Indiana (On workgroup, webinar presenters)
- Considering Options
 - Maryland (On workgroup, webinar presenters)
 - Virginia (On workgroup)
- Not on Workgroup, Considering Assumption
 - Wisconsin (joined March workgroup call)
 - Arkansas
- EPA
 - HQ and Regions (On workgroup, webinar presenters)

PROCESS TO FACILITATE INFORMED DIALOGUE AS PART OF ASWM'S ASSUMPTION WPDG PROJECT



- Opportunity for all states to weigh in
- Easy to use
- Able to take pulse of emerging issues over time (not one and done)
- Allows for different comfort levels/styles around sharing and asking
- Documents input for decisions



ASWM ASSUMPTION PROJECT EXPLORATION OF PRACTICE

- Checklists and Tracking Tools
- Assumable Waters Maps and Analyses
- Regulatory “Crosswalks”
- Feasibility Studies
- MOUs
- Program Descriptions
- Funding Models
- Working Relationships between Agencies
- Stakeholder Engagement Processes and Outreach

[Photo Source: public domain photos - Bing images](#)



ASWM ASSUMPTION PROJECT

FOCUS AREAS

- Assumption Basics
- Assumption Frameworks
- Assumable Waters Analysis
- State/Tribal and Federal Regulatory Crosswalks
- Developing Program and Workload Descriptions
- Data Management for Assumption
- Mitigation Banking as a Component of Assumption
- Exploring Funding Strategies
- Making the Case for Assumption
- Exploring Options: Existing, SPGPs, Assumption



Introduction to Assuming the CWA Section 404 Program

**START
HERE!**

Association of State Wetland Managers
Clean Water Act §404 Assumption Webinar Series

**Assumption 101:
Introduction to Assuming the CWA Section 404 Program**

February 11, 2020
3:00 pm – 5:00 pm Eastern

Webinar Presenters:

- Kathy Hurd, US Environmental Protection Agency
- Heather Mason, Florida Department of Environmental Protection
- Anne Garwood, Michigan Department of Environment, Great Lakes and Energy
- Susan Lockwood, New Jersey Department of Environmental Protection
- Brenda Zollitsch, Association of State Wetland Managers

Part 1: Introduction: Brenda Zollitsch, Association of State Wetland Managers
Presenter: Kathy Hurd, US Environmental Protection Agency

- Introduction the concept of assumption
- EPA's current efforts to encourage assumption
- review the basic steps in the assumption process and requirements.
- MI and NJ share their experiences as assumed states and what the benefits and challenges have been.
- alternatives to assumption.



Assumption Basics



ASSUMPTION BASICS

- The process whereby a state or tribe obtains approval from the EPA to administer the § 404 program within their borders and consequently begins administering all aspects of the program.
- Allows a state or tribe to carry out a fully integrated and comprehensive water program
- Assumption is not delegation



NO LESS STRINGENT THAN

To assume the § 404 program, a state or tribe's program must be no less stringent than program requirements in the CWA and implementing regulations.

For example, a state or tribe must:

- Have sufficient authority to regulate all waters of the US that may be assumed;
- Regulate at least the same activities as listed in the Act and regulations;
- Provide for sufficient public participation;
- Ensure compliance with the Section 404(b)(1) guidelines, which provide environmental criteria for permit decisions;
- Have adequate enforcement authority; and
- Comply with other applicable regulations (33 USC part 1344(h); 40 CFR part 233)

ASSUMABLE WATERS

Assumption by a state or tribe does not alter CWA jurisdiction over waters of the United States.

States and tribes assume permitting authority for certain waters, but others are retained under the authority of the Corps.

CWA section 404(g)(1):

- *“... those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto ...”*



THE EPA CONTINUES TO REVIEW SOME PERMIT APPLICATIONS

- In an assumed § 404 program, the EPA reviews defined categories of permit applications and may request review of any application.
- Any permit for which the EPA has not waived review, EPA sends to the Corps, USFWS, and NMFS for comment.
- If EPA comments on, objects to or requires conditions for a § 404 permit, the state or tribe cannot issue the § 404 permit unless the EPA's concerns are resolved.



POTENTIAL BENEFITS OF ASSUMPTION

- Improved resource protection
- Increased program efficiency
- Effective allocation of federal and state agency resources
- Improved integration with other state resource programs
- Use of state-specific resource policies and procedures
- Increased regulatory program stability
- Increased public support



COMMON BARRIERS TO ASSUMPTION

- Meeting program requirements
- Inability to assume administration of Section 10 waters of the Rivers and Harbors Act and wetlands adjacent to these waters:
- Inability to assume § 404 authority in only one geographic portion of the state.
- Need for alternative coordination with other federal resource programs
- Federal agencies and interest groups may oppose assumption over concerns about maintaining protection consistent with the other federal laws in the state following assumption
- Lack of dedicated federal funding specifically for Section 404 Program administration
- Wetland Program Development Grants Cannot Fund Implementation Activities



THE GREAT UNKNOWN: ALLOWABLE ASSUMPTION FRAMEWORKS

- Full Assumption
- Partial Assumption
- Phased-In Assumption
- Municipal Role

ASWM § 404 ASSUMPTION PROJECT FREQUENTLY ASKED QUESTIONS (FAQ) RESOURCE



Association of State Wetland Managers
Assumption Frequently Asked Questions – March 2021

A. What is Clean Water Act § 404 Assumption?

"Assumption" of the Clean Water Act (CWA) Section 404 program describes the process whereby a state or tribe obtains approval from the EPA to administer the § 404 program within their borders and consequently begins administering all aspects of the program. For those states or tribes with mature, integrated water management programs that include the regulation of dredged or fill activities, § 404 program assumption allows a state or tribe to carry out a fully integrated and comprehensive water program addressing the comprehensive range of state, tribal, and CWA requirements. Assumption is not delegation; the program is operated under state or tribal law and not delegated federal authority. Delegated programs mean that a state or tribe is issuing a permit or taking an action on behalf of the federal government. A state or tribal dredge and fill permit program may protect waters of the state or tribe that are not waters of the United States.

B. Benefits of Assuming the § 404 Program

- **Improved resource protection:** Ultimately, greater protection of wetland resources will result from the coordinated efforts of both state/tribal and federal agency staff, the use of methods specific to the state or tribe, and state/tribal expertise backed by federal scientific expertise, and a more efficient regulatory program.
- **Increased program efficiency:** Program assumption can greatly reduce duplicative state/tribal and federal permitting requirements, and eliminate potentially conflicting permit decisions, conditions, and mitigation requirements. State permit programs have often been more timely than federal programs. In Michigan, for example, actions typically must be taken on completed permit applications within 90 days, and the average permit processing time is approximately 60 days (less for general or minor permits). In New Jersey, generally permit decisions are made in 60 days on average while wetland boundary verifications generally are completed in 90 days and individual permit decisions take less than 180 days.
- **Effective allocation of federal and state agency resources:** State programs such as those in Michigan and New Jersey are staffed by local officers with the capability of proceeding on-the-revise of almost all permit applications (including those reviewed by the Corps under the nationwide permit process) and work directly with permit applicants to reduce adverse impacts to the resource.

1

When reviewing particularly complex resource agency staff retain the o

- **Improved integration with other permitting programs** at the state level, other related land and water management, local or regional water management, local or regional agencies and organizations respons

- **Use of state-specific resource public state has a degree of flexibility in it needs of the state, provided that it a wetland delineation manual that manual developed for the entire ecological types of wetland prone program is tailored to the needs of**

- **Increased regulatory program state program requirements have remain 404 permit program administered for this stability. First, because Michigan impacted by changes in the federal inconsistent with the federal program significant degree of controversy a Michigan's program (e.g. early new following the Tulloch decision, and**

- **Increased public support:** State public support for wetland regulation and federal agencies, and by public

C. Barriers to Assumption

- **Meeting program requirements:** C in terms of the definition of covered exceptions. To be approved to ad that it has equivalent authority in the the basis for state authority may be can demonstrate their program an example, while federal jurisdiction U.S. Constitution, state jurisdiction and to protect to the state's natural authorities may, initially, appear q

- Basics of Assumption
- No Less Stringent Requirements
- Benefits and Barriers
- Status of States
- Complete Assumption Package
- Assumption Process
- Roles of Different Agencies



A photograph of a lush green forest landscape. In the foreground, there is a stream with a tree stump. The background is filled with dense green trees. A dark semi-transparent box is overlaid on the right side of the image, containing the text "The 404 Assumption Process" in white. A thin yellow horizontal line is positioned below the text.

The 404 Assumption Process

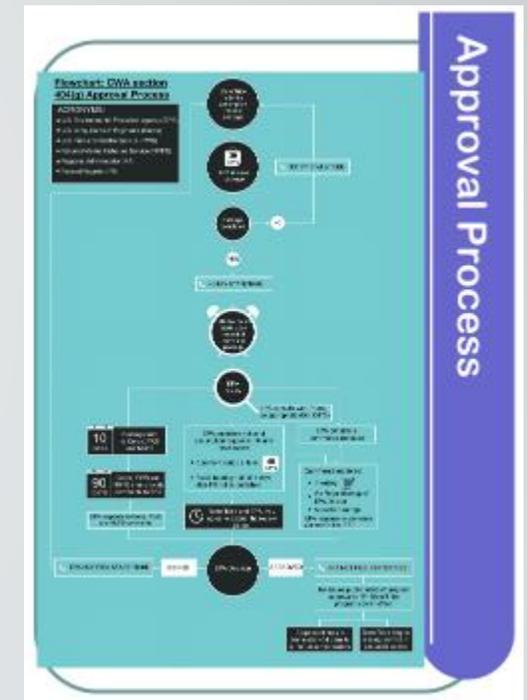
THE ASSUMPTION PROCESS

At least until the new 404(g) rule is released

Assumption process steps are formally outlined on the EPA's website at:

<https://www.epa.gov/cwa404g/assumption-process-under-cwa-section-404>.

- **Step 1: State or Tribe submits a complete assumption application**
- **Step 2: EPA Reviews Application**
- **Step 3: EPA Distribution of Application for Public Comment**
- **Step 4: EPA holds Public Hearing**
- **Step 5: EPA Makes Decision**



THE COMPLETE ASSUMPTION 'PACKAGE'

- Details what a state or tribe will do
 - What the permit process is
 - What criteria are used in the review, appeals processes
 - Who is responsible
 - How, when and with whom coordination will occur
- Copies of permit forms, approval forms and any review criteria or guidance manuals.
 - Describe the structure of the state/tribal regulating agency and its regulatory program
 - Details funding and staffing levels

The EPA does not determine these elements of the program, only the state or tribe does this decision-making.

ASSUMPTION PACKAGE REQUIREMENTS



A state or tribal package requesting Section 404(g) assumption must include:

1. A letter from the Governor or equivalent tribal leader;
2. **A complete program description;**
3. A statement from the Attorney General or tribal equivalent;
4. A Memorandum of Agreement (MOA) with the respective EPA Regional Administrator;
5. A Memorandum of Agreement (MOA) with Secretary of Army (through the Chief of the U.S. Army Corps of Engineers); and
6. Copies of all applicable state or tribal statutes and regulations administering the program.



PROGRAM DESCRIPTION

A state or tribe must develop a **complete program description** ([40 CFR 233.11](#)). The program description must include (but is not limited to):

- A description of the scope and structure of the program, including jurisdiction, activities regulated, anticipated coordination, permit review criteria, and scope of permit exemptions, if any;
- Procedures for permitting, administrative review, and judicial review;
- Structure and organization of state or tribal agency responsible for program administration;
- Funding and staffing levels;
- Anticipated workload;
- Copies of permit application forms, permit forms, and reporting forms;
- Compliance evaluation and enforcement programs;
- Description of the waters under state jurisdiction and those under the U.S. Army Corps of Engineers (Corps) jurisdiction; and
- Best Management Practices proposed to satisfy farm, forest, and temporary mining roads exemption provisions.



CONDUCTING REGULATORY CROSSWALKS

DEMONSTRATING EQUIVALENCY IN STATE/TRIBES REGULATIONS AND PERMITTING ACTIVITIES

An analysis that demonstrates program equivalency.

- Ensures that the assumed program is equivalent to – even if not necessarily the same as - federal requirements.
- Requires a comparison (aka “crosswalk”) of federal requirements with proposed state/tribal document(s).

Emerging Options:

- Narrative, programmatic approach (ex. FL)
- Comparison grids showing side-by-side text (ex. OR)
- Hybrid (ex. MN)

Conducting Federal-State/Tribal Regulatory Crosswalks for Clean Water Act Section 404 Assumption

Monday, March 22, 2021 - 3:00 – 4:30 pm Eastern

[Register Here](#)

PRESENTERS

- Heather Mason, Florida Department of Environmental Protection
- Barbara Poage, Oregon Department of State Lands
- Les Lemm, Minnesota Board of Water and Soil Resources
- Ken Powell, Minnesota Board of Water and Soil Resources

ABSTRACT

In the assumption planning process, states and tribes must complete a regulatory crosswalk. The purpose of the crosswalk is to examine any differences between state and federal standards and to provide insights into any gaps that may need to be filled. The regulatory crosswalk allows states and tribes to show that the final program, when ready for assumption, provides a no less stringent than federal regulatory program. This webinar will discuss the basics of regulatory crosswalks and provide three different experiences from states that have completed or are in the process of completing a regulatory crosswalk as part of their assumption planning process. Presenters will include staff from Florida (which recently assumed the 404 Program), Oregon which has completed the crosswalk but is still in the process of developing their assumption package, and Minnesota, which is in the early phases of conducting their analysis. Each presenter will share when in the assumption process they conducted their crosswalk, what process and format they used to conduct it, and any challenges they encountered. They will share what their crosswalk found/is finding, whether there were any gaps or inconsistencies that needed to be addressed and how they filled them. Each presenter will share lessons learned and tips for others planning to conduct a regulatory crosswalk. The webinar will end with a Q&A session with the presenters.

Sign Up Today!
March 22 Webinar

EPA's assumption regulations establish the requirements for the crosswalk



ASWM ASSUMPTION PROJECT CONDUCTING AN ASSUMABLE WATERS ANALYSIS

Want a Deeper Dive?

Webinar #5 – Documenting Assumable Waters for Assumption for the CWA § 404

Held Friday, November 6, 2020 - 3:00-5:00 pm ET

[View Recorded Webinar](#)

INTRODUCTION

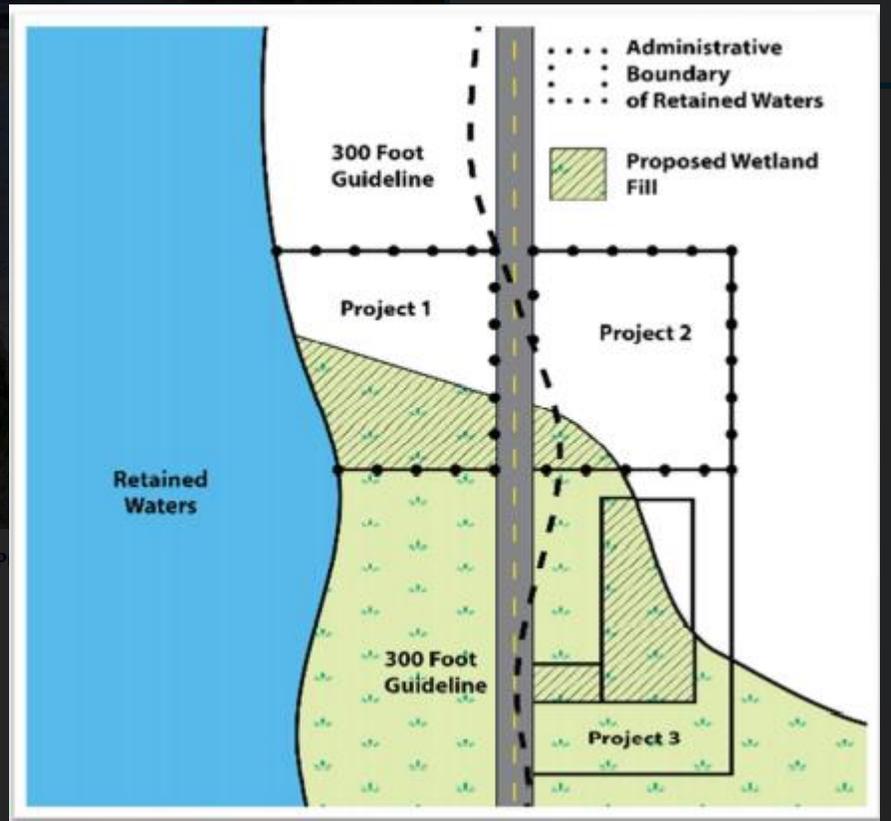
- Brenda Zollitsch, Association of State Wetland Managers [[POWERPOINT PRESENTATION](#)]

PRESENTERS

- Eric Metz, Oregon Department of State Lands [[POWERPOINT PRESENTATION](#)]
- Randy Sounhein, Oregon Department of State Lands [[POWERPOINT PRESENTATION](#)]
- Heather Mason, Florida Department of Environmental Protection [[POWERPOINT PRESENTATION](#)]
- Camille Beasley, Florida Department of Environmental Protection [[POWERPOINT PRESENTATION](#)]
- Les Lemm, Minnesota Board of Water and Soil Resources – Wetland Section Manager [[POWERPOINT PRESENTATION](#)]

ABSTRACT

While the new 404(g) assumption rule has not yet been released by EPA, this webinar provided food for thought as states consider assumption before formal guidance is provided in the form of the new rule. This webinar began with an introduction to assumption and assumable waters: What are assumable waters and what role do they play in an assumed program? What does a state or tribe gain through managing assumable waters? The webinar continued with discussion of the different roles states, tribes, the Corps and EPA play in determining assumable waters and discuss what needs to be done to determine assumable waters for the assumption process. The webinar then shared the work of three different states currently engaged in different phases of the assumption process: Florida, Oregon and Minnesota. State agency staff will share their approaches to analysis, discuss how they have been working with the corps, and share information about their GIS layers, as well as any lessons learned.



- What's In/What's Out?
- Assumable Waters Report
- Building Technical Understanding
- Working with the Corps
- Mapping Considerations
- Documenting Results
- Crafting Report(s)

CONDUCTING A FEASIBILITY ANALYSIS

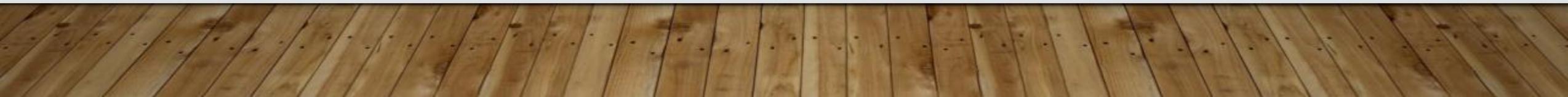
DETERMINING IF ASSUMPTION IS RIGHT FOR YOUR STATE OR TRIBE

- Assumable workload
 - Identify waters retained by the Corps vs. assumable waters
 - Calculate workload considering past permits and processing times while accounting for NWPR
- Staffing Levels and Administration Costs
 - Determine program staffing needs including specialized positions
 - Estimate annual cost to administer the program keeping in mind economies of scale issues
- Sustainable Funding = Major Barrier
 - Develop funding scenarios that cover the true cost of the assumed program
 - Consider a mix of appropriated funds as well as user pay structures like an hourly rate, permit type, project cost or chargeable impact rates

A vibrant green forest landscape. In the foreground, there are dense green bushes and ferns. A small stream flows through the middle ground, with a large, weathered log lying on the bank. The background is filled with tall, leafy trees, creating a dense canopy. The overall scene is bright and natural.

Delving and Documenting
ASWM Project Products

WHERE TO START? WHAT TO CHOOSE? WHO TO ASK?



ASWM § 404 ASSUMPTION PROJECT

ASSUMPTION CHECKLIST:

A LIST OF INITIAL CONSIDERATIONS



Association of State Wetland Managers
Checklist of Useful Considerations for States and Tribes
Exploring Assumption of the § 404 Program

In recent years, the U.S. Environmental Protection Agency has been encouraging states and tribes to assume the Clean Water Act § 404 Program. Additionally, changes in federal regulations have prompted states and tribes to consider assumption in order to streamline and/or increase the predictability of § 404 permitting, and ensure important wetlands and waters are appropriately protected.

Assumption of the CWA § 404 program describes the process whereby a state or tribe obtains approval from the EPA to administer the § 404 program within their borders and consequently begins administering all aspects of the program. For those states or tribes with mature, integrated water management programs that include the regulation of dredge or fill activities, assumption of the § 404 program allows a state or tribe to carry out a fully integrated and comprehensive water program addressing the complete range of state, tribal, and CWA requirements. Please note: Assumption is not delegation because the program is operated under state or tribal law and not under federal authority. Delegated programs mean that a state or tribe is issuing a permit or [other actions](#) on behalf of the federal government.

The following list identifies key elements of considering and pursuing assumption, including suggestions for alternative actions that states and tribes might take when the timing for is not right for assumption.

When considering assumption, state/tribe will want to:

- Define state/tribal goals for assumption.
 - What would be the benefit to the state or tribe?
 - Why is assumption being considered at this time?
- Determine if there is public support for comprehensive administration of a dredge and fill permit program by the state or tribe.

It is important for discussion to take place with stakeholders on issues such as:

 - What is the purpose of state/tribal program assumption?
 - Why should the state or tribe consider the additional burden of administering a dredge/fill permit program in lieu of the federal program?
 - Will the state or tribal water resources be adequately protected?
 - Would it be a concern that EPA would have an oversight role, including the ability to object to an individual permit?

- Defining state/tribal goals for assumption
- Determining if there is public support for comprehensive administration of a dredge and fill permit program by the state or tribe
- Conducting an inventory of existing state/tribal statutes and regulations
- Undertaking an initial side-by-side comparison of state/tribal and federal program
- Identifying gaps
- Identifying and securing funding mechanisms to support the assumed program:
- Guaranteeing adequate public participation processes
- Identifying how the state or tribe will comply with other required federal laws



You are here: Home - Wetland Programs - 404 Assumption

404 Assumption



What is CWA 404 Assumption?

"Assumption" of the CWA Section 404 program describes the process whereby a state or tribe obtains approval from the EPA to administer the § 404 program within their borders and consequently begin administering all aspects of the program. For those states or tribes with mature, integrated water management programs that include the regulation of dredged or fill activities, § 404 Program assumption allows a state or tribe to carry out a fully integrated and comprehensive water program addressing the full range of state, tribal, and CWA requirements. Assumption is not delegation. Delegated programs mean that a state or tribe is issuing a permit or taking an action on behalf of the federal government.

In accordance with the requirements of Section 404, a state or tribe may only be authorized to assume the Section 404 Program if it has authority over all assumable waters and demonstrates that it will apply legal standards consistent with the Clean Water Act (CWA) requirements in operating a permitting program. Tribes are eligible to apply to assume the Federal permit program after they have met requirements for "treatment as a state." See the February 11, 1993, Federal Register notice.

For more information about assumption, check out the following ASWM document: [ASWM CWA 404 Assumption Frequently Asked Questions \(Go here\)](#)

Which States Have Assumed the 404 Program?

Michigan, New Jersey and Florida have fully assumed programs. Other states are in the process of applying for assumption, including Florida, Minnesota and Oregon. Other states are starting the process of exploring assumption, including Nebraska and Indiana. To date no tribes have assumed the 404 program. However, tribes are allowed to assume the program. In 2003, several tribes are considering pursuing assumption.

The Assumption Process

A complete assumption "package" must detail what a state/tribe will do, what the permit process is, what criteria are used in the review, appeals processes, who is responsible, and what they have, when and with whom coordination will occur. The package must include copies of permit forms, approval forms and any review criteria or guidance manuals. Additionally, the structure of state/tribal regulating agency must be described, as well as who does what, as well as funding and staffing issues. EPA does not determine these elements of the program; only the state/tribe does the decision-making.

The assumption process is comprised of multiple steps. These steps are formally outlined on EPA's website [here](#).

EPA Assumption Process Flowchart

EPA has developed a flowchart for the steps and timing of the assumption process. To view the flowchart, [click here](#), to go to EPA's document. A new flowchart will be released by EPA when the new 404(g) Rule comes into effect.

Assumption Package Requirements

Assumption package requirements can be found in the federal assumption regulations; however, EPA does not provide a standardized assumption application form. The requirements for a complete assumption request package are described in EPA Section 404(g) regulations (40 CFR 231.12-231.14). Also see EPA's page on the assumption application [here](#).

A state or tribal package requesting Section 404(g) assumption must include:

1. A letter from the Governor or equivalent tribal leader;
2. A Complete program description;
3. An Attorney General's statement or tribal equivalent;
4. A Memorandum of Agreement (MOA) with the respective EPA Regional Administrator;
5. A Memorandum of Agreement (MOA) with Secretary of Army (through the Chief of the U.S. Army Corps of Engineers); and
6. Copies of all applicable state or tribal statutes and regulations administering the program.

Regulations

- 404(b)(1) Guidelines (PDF)
- Wetlands Protection: 40 CFR Parts 22, 228 through 233
- Assumption Regulations (Part 233 404 State Program Regulations) (PDF)
- Section 404 State Assumption Regulations (PDF)
- Letter from Peter S. Silva, Assistant Administrator, U.S. Environmental Protection Agency, December 27, 2015, Clarifying Disturbed Species Act Section 7 Consultation (PDF)
- Text of Tribal Assumption Regulations (PDF)

State Feasibility Studies

- Coming Soon. Please check back.

Information on Assumed State Programs

- "Assumptions, New Jersey Style" (PDF)

ASWM Template 404 Assumption Investigation Tools

- Matrix of State Assumption Sample Document (PDF)
- More resources forthcoming - check back soon.

Other Publications

- Clean Water Act 404 Assumption: What It Is, How Does It Work, and What Are the Benefits?
- U.S. EPA Fact Sheets

WHERE TO FIND ASWM'S ASSUMPTION PROJECT RESOURCES

[404 Assumption: https://aswm.org/wetland-programs/s-404-assumption](https://aswm.org/wetland-programs/s-404-assumption)

- Basic Information
- Links to 404(g) Rule and EPA Guidance
- All Project Documents
 - FAQs
 - Definitions List
 - Checklist of Assumption Considerations
 - Documenting Assumable Waters
 - Conducting Crosswalks
 - Matrix of Assumption Examples
 - Planning SmartSheet
- Useful websites
- A PDF of Resource Links

ASWM ASSUMPTION PROJECT DATA MANAGEMENT FOR ASSUMPTION

The screenshot shows a webinar presentation slide with the following content:

- Association of State Wetland Managers**
§ 404 Assumption Project Webinar Series
- Data Management for Assumption of the Clean Water Act § 404 Program**
- June 17, 2020**
3:00 pm – 4:30 pm Eastern
- Webinar Presenters:**
 - Andy Robertson, Saint Mary's University
 - Anne Garwood and Chad Fozell, Michigan Department of Environment, Great Lakes, and Energy
 - Heather Mason, Florida Department of Environmental Protection
 - Eric Metz, Oregon Department of State Lands

Below the main slide, there are three smaller thumbnail images of other slides from the webinar, each with a play button icon.

Part 1: Introduction: Brenda Zollitach, Association of State Wetland Managers
Presenter: Andy Robertson, Saint Mary's University

- What kinds of data need to be managed by an assumed state?
- Who needs access to that data and in what forms?
- How is data going to be used?
- What are database considerations?
- How is data fed into new and existing permitting and reporting systems?
- Are there examples of existing databases that can serve as models?

ASWM ASSUMPTION PROJECT

ASSUMPTION AND MITIGATION BANKING

Association of State Wetland Managers
Clean Water Act §404 Assumption Webinar Series

Mitigation Banking Considerations for States and Tribes Exploring Assumption of the CWA Section 404 Program

September 23, 2020
3:00 pm – 5:00 pm Eastern

Webinar Presenters:

- Joe Williams, Ecosystem Investment Partners
- Les Lemm, Minnesota Board of Water and Soil Resources
- Heather Mason, Florida Department of Environmental Protection
- Chris Tanner, Manson, Bolves, Donaldson, Varr

Part 1: Introduction: Brenda Zollitech, Association of State Wetland Managers
Presenter: Joe Williams, Ecosystem Investment Partners

- How does mitigation banking get addressed when a state assumes the 404 Program?
- Who needs to be involved in working out permitting and implementation arrangements?
- Are there special considerations?
- Can a state assume all or none of the mitigation banks?
- What about existing permits, what happens to them?



ASWM'S LIBRARY OF ASSUMPTION EXAMPLES (MATRIX)

- 135 real world examples
- Avoid starting from scratch/recreating
- Benefit from others' investments of time/resources
- Do require adaptation for use in other states

Type of Resource	Source	Link
ASWM Links to State 404 Assumption		Last Updated: 3-10-2021
ASWM Assumption Webpage	ASWM	404 Assumption (aswm.org)
ASWM Assumption Checklist of Considerations (PDF)	ASWM	Link to final project document here
Assumption Frequently Asked Questions (PDF)	ASWM	Link to final project document here
ASWM Smartlist for Assumption Planning Process	ASWM/Oregon	Forthcoming PDF (based on Oregon Example)
EPA Status of State 404 Assumption Map	EPA Headquarter	https://www.epa.gov/cwa404/us-interactive-map-state-and-tribal-asw
Final Report of the Assumable Waters NACEPT	FACA	https://www.epa.gov/sites/production/files/2017-06/documents/lawsub
State Wetland Protection Permits (incl. assumption)	Michigan	https://www.michigan.gov/statelicensezsearch/0,4671,1-160-24766-244
State and Federal Wetland Regulations	Michigan	EGLE - State and Federal Wetland Regulations (michigan.gov)
ACOE)	Michigan	http://www2.law.mercer.edu/ebw/wetlands/michigan%20corps%20assu
Assumption Database (MI/Waters includes Assumption Data)	Michigan	MI/Waters - Home (state.mi.us)
Michigan PPT on 404 Assumption	Michigan	https://www.michigan.gov/documents/dsq/dsq-whm-sac-MI404-Prgr
State Assumption Webpage (Studies, workplan, presentations for stakeholders, factsheet)	Minnesota	404 Assumption LMN Board of Water, Soil Resources (state.mn.us)
State Assumption Feasibility Study	Minnesota	Section 404 - Assumable Waters Analysis (arcgis.com)
Assumable Waters Analysis (Initial Analysis)	Minnesota	https://bwrr.state.mn.us/sites/default/files/2019-01/Wetlands_Regulato
Assumable Waters Analysis Central Minnesota	Minnesota	https://www.aswm.org/assumptiondocs/mn_c_example.pdf
Assumable Waters Analysis East Central Minnesota	Minnesota	https://www.aswm.org/assumptiondocs/mn_ec_example.pdf
Assumable Waters Analysis Lake George Area	Minnesota	https://www.aswm.org/assumptiondocs/mn_lake_george_case_example
Assumable Waters Analysis North Central Minnesota	Minnesota	https://www.aswm.org/assumptiondocs/mn_nc_example.pdf
Assumable Waters Map	Minnesota	Section 404 - Assumable Waters Analysis (arcgis.com)
Section 10 Waters Map	Minnesota	
Assumable Waters Analysis (Final Analysis)	Minnesota	Forthcoming PDF
Documenting Assumable Waters - Webinar PPT (MN)	Minnesota	Title Slide with Image (aswm.org)
Regulatory Crosswalk (Narrative)	Minnesota	Forthcoming PDF
404 Assumption Funding Law Provision	Minnesota	2019 404 Assumption Law Provision.pdf (state.mn.us)
Memo to Stakeholders	Minnesota	Assumable Waters Memo to Stakeholders 3-11-18
Memo to Stakeholders	Minnesota	404 Assumption Update Memo to Stakeholders 10-19-20.pdf (state.mn.us)
Stakeholder Update - PPT PDF	Minnesota	Assumption of Section 404 of Federal Clean Water Act Stakeholder Upd
Nebraska 404 Assumption Elements and Tasks (2020)	Nebraska	Upload PDF (based on Nebraska Example)
Example Gantt Chart Assumption Process Timeline	Nebraska	Upload PDF (based on Nebraska Example)
Investigation Report - Assumable waters, workload allocation, cost and sustainable funding options	Nebraska	Forthcoming PDF
State Assumption Webpage	New Jersey	https://www.nj.gov/dep/landuse/du_epa.html
State Wetland Permitting Webpage	New Jersey	https://www.epa.gov/wetlands/new-jersey-clean-water-act-ss404-perm
MOA with Secretary of Army (through the Chief of the US ACOE)	New Jersey	http://www2.law.mercer.edu/ebw/wetlands/new%20jersey%20corps%20
State Assumption Webpage	Oregon	https://www.oregon.gov/dcl/W/1Pages/404PermitAuthority.aspx
State Assumption Feasibility Study	Oregon	404 Leg Report 12-11-2020_Final_With_appendices.pdf Powered by I
404 Program Partial Assumption	Oregon	https://www.aswm.org/assumptiondocs/oregon_404_program_partial



BUT WAIT...THERE'S MORE!

- ✓ Statement from the Attorney General
- ✓ Memoranda of Agreement (Corps, EPA)
- ✓ Assumed Program Permit Application Forms and Reporting Forms
- ✓ Documentation of Compliance and Evaluation Program Elements
- ✓ Links to Mapping Programs and Databases
- ✓ Sample Checklists and SmartSheets
- ✓ Stakeholder Engagement, Public Notice, Presentations, Planning Minutes

ASWM ASSUMPTION PROJECT

THE WHOLE ENCHILADA: FLORIDA'S ASSUMPTION PACKAGE AND PROCESS

Association of State Wetland Managers
Clean Water Act §404 Assumption Webinar Series
**Florida's Assumption Process:
Planning, Decisions and Lessons Learned**

November 4, 2020
3:00 pm – 4:30 pm Eastern

Webinar Presenters:
- Tim Rach, Florida Department of Environmental Protection
- Heather Mason, Florida Department of Environmental Protection

Part 1: Introduction: Brenda Zollitach, Association of State Wetland Managers
Presenters: Tim Rach, Florida Department of Environmental Protection and Heather Mason, Florida Department of Environmental Protection

Representatives from the FDEP shared their path to submittal of a complete assumption package to EPA

- Overview of the agency's structure, program, and delineation rule.
- Florida's assumption history, reasons for assuming, and rulemaking.
- Contents of Florida's assumption package.
- Preparations to implement their assumed program
- Sharing of lessons learned



ADDITIONAL PROJECT BENEFITS

- Shared regular updates/state of the practice
- Removed the sense of isolation
- Helped state keep the momentum going
- Identified and explored alternative approaches
- Built on existing resources
- Have been able to show what other states are doing
- Troubleshooting and brainstorming
- Developed a valued network of colleagues working on assumption (peer-to-peer network/support system)

FOR MORE INFORMATION

Association of State Wetland Managers

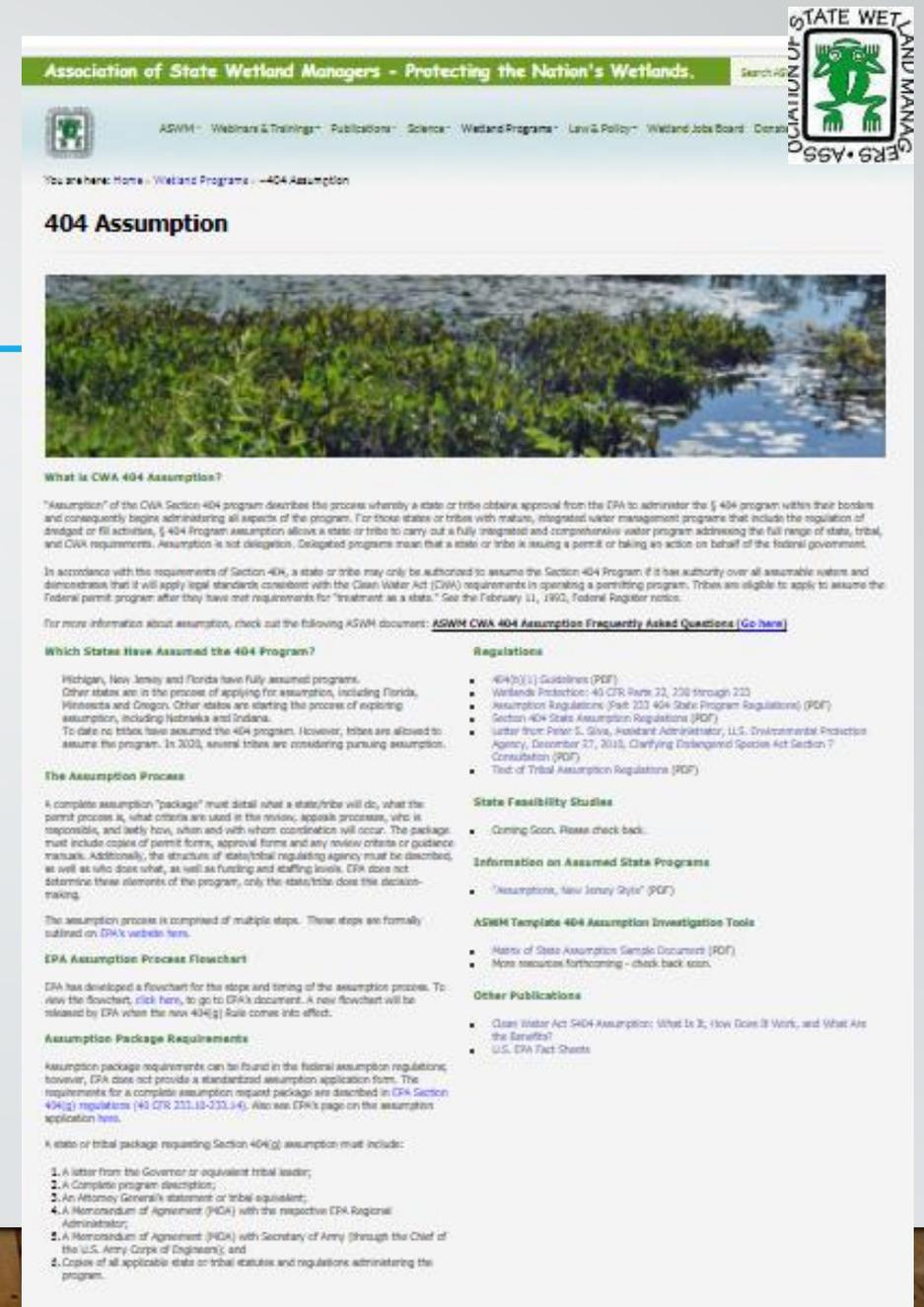
www.aswm.org

(207) 892-3399

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ASWM Senior Policy Analyst

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The screenshot shows the ASWM website page for "404 Assumption". At the top, there is a navigation bar with the ASWM logo and the tagline "Association of State Wetland Managers - Protecting the Nation's Wetlands." Below the navigation bar, there is a search bar and a list of menu items: "ASWM", "Webinars & Trainings", "Publications", "Science", "Wetland Programs", "Law & Policy", "Wetland Jobs Board", and "Donate". The main content area features a large photograph of a wetland landscape with green trees and water. Below the photo, the heading "404 Assumption" is displayed. The text explains that "Assumption" of the CWA Section 404 program describes the process whereby a state or tribe obtains approval from the EPA to administer the § 404 program within their borders and consequently begin administering all aspects of the program. It also mentions that in accordance with the requirements of Section 404, a state or tribe may only be authorized to assume the Section 404 Program if it has authority over all assumable waters and demonstrates that it will apply legal standards consistent with the Clean Water Act (CWA) requirements in operating a permitting program. The page includes several sections: "What is CWA 404 Assumption?", "Which States Have Assumed the 404 Program?", "The Assumption Process", "EPA Assumption Process Flowchart", "Assumption Package Requirements", "Regulations", "State Feasibility Studies", "Information on Assumed State Programs", "ASWM Template 404 Assumption Investigation Tools", and "Other Publications".



Kathy Hurd
US EPA Headquarters

Photo Credit: EPA