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Revision to Delegation of Authority/Clean Water Act Section 404 Permitting: March 30th U.S. Environmental Protection Agency Memorandum

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United States Environmental Protection Agency (“EPA”) Administrator E. Scott Pruitt issued a March 30th memorandum titled:

Revision to Delegation of Authority 2-43, Section 404 Dredged and Fill Material Permitting (“Memorandum”)

The *Memorandum* was directed to:

- Assistant Administrator, Office of Water
- Regional Administrators

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States. The phrase “waters of the United States” defines the extent of geographic jurisdiction of the Section 404 Program. A permit must be obtained from the U.S. Army Corps of engineers or a state with an EPA-approved program prior to beginning any nonexempt activity involving the placement of dredged or fill material into waters of the United States, including wetlands.

The Pruitt *Memorandum* references what it characterizes as a two-step process to review and define “waters of the United States” under the Clean Water Act.

The *Memorandum* is stated to be issued as part of EPA’s effort to ensure consistency and certainty in certain jurisdictional determinations under the Clean Water Act. The revised delegation of authority for the Clean Water Act Section 404 dredged and fill permitting program is stated to be encompassed by this process.

The *Memorandum* states that with the revised delegation:

... authority previously delegated to regional administrators to make final determinations of geographic jurisdiction shall be retained by the Administrator.

The Administrator requests that the addressees:

. . .take all necessary steps to adjust associated consultations, reviews and other practices in a manner consistent with the revised delegation. As part of effectuating this revision, I ask that you involve the Administrator's Office early on in the process of developing geographic determinations.

The components of the *Memorandum* include:

- Authority
- To Whom Delegated
- Limitations
- Redelelegation Authority
- Additional References

Unlike the Clean Water Act National Pollution Discharge Elimination System permitting program, which has been delegated to almost every state, only two states have received Section 404 authority.

[A copy of the *Memorandum* can be downloaded here.](#)