




E. SCOTT PRUITT
ADMINISTRATOR

March 30, 2018

MEMORANDUM

SUBJECT: Revision to Delegation of Authority 2-43, Section 404 Dredged and Fill Material Permitting

FROM: E. Scott Pruitt 

TO: Assistant Administrator, Office of Water
Regional Administrators

To restore regulatory certainty and promote the rule of law, the U.S. Environmental Protection Agency began a two-step process last year to review and define “waters of the United States” under the *Clean Water Act*. In light of this ongoing effort and to ensure consistency and certainty in how the EPA makes certain jurisdictional determinations under the *Clean Water Act*, I have issued the accompanying revised delegation of authority for Section 404 dredged and fill material permitting. With this revised delegation, authority previously delegated to regional administrators to make final determinations of geographic jurisdiction shall be retained by the Administrator. Please 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.

Please consult the revised delegation for additional information. The revised delegation is effective immediately.

Attachment

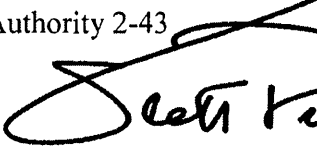




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SUBJECT: Delegation of Authority 2-43
FROM: E. Scott Pruitt 
TO: Assistant Administrator, Office of Water
Regional Administrators

2-43. Section 404 Dredged and Fill Material Permitting (1200 TN 396)

1. AUTHORITY

- a. To approve grants pursuant to Section 104(b)(3) of the *Clean Water Act* for research, investigations, experiments, training, demonstrations, surveys and studies related to development of wetlands protection programs, including those programs to issue permits for disposal of dredged or fill material (Section 404(g));
- b. To review, comment on and/or object to applications for state permits in a state with an approved assumed Section 404 permit program (Section 404(j));
- c. To approve or deny state program submissions (Section 404(h));
- d. To approve or deny revisions to approved state programs (Section 404(h));
- e. To review and comment on U.S. Army Corps of Engineers Section 404 public notices (Section 404(q));
- f. To restrict or prohibit designation of disposal sites (Section 404(c));
- g. To request review by the Assistant Secretary of the Army of proposed permit decisions;
- h. To approve regional designations, including changes, of special cases and special Section 404(f) matters (Memorandum of Agreement with Department of the Army); and
- i. To make final determinations of applicability of Section 404(f).

2. TO WHOM DELEGATED

- a. The authority in paragraph 1.a is delegated to the Assistant Administrator for Water and the regional administrators.
- b. The authorities in paragraphs 1.b - 1.e and 1.i are delegated to the regional administrators.



- c. The authorities in paragraphs 1.f - 1.h are delegated to the Assistant Administrator for Water.

3. LIMITATIONS

- a. The Assistant Administrator for Water may exercise the authority under paragraph 1.a for research, investigations, experiments, training, demonstrations, surveys and studies having national applicability (e.g. that can be utilized throughout the United States, development of cumulative impact assessment techniques that can be used for project reviews in all parts of the United States).
- b. Regional administrators may exercise the authority under paragraph 1.a. for research, investigations, experiments, training, demonstrations, surveys and studies having regional applicability (e.g. development of public education materials for a particular state wetlands protection program, development of wetlands evaluation techniques designed for a specific wetland type found in one region).
- c. Regional administrators are delegated authority under paragraph 1.b to transmit the consolidated federal comment on a state permit application in an approved, assumed state program. This initial comment letter transmitting the consolidated federal comment to the appropriate state permitting agency is referred to as the "A" letter.
- d. Regional administrators are delegated authority under paragraph 1.b to send letters to the appropriate state permitting agency, either sustaining or removing an outstanding federal objection. This letter either sustaining or removing an outstanding federal objection is referred to as the "B" letter. Concurrence by the Assistant Administrator for Water is required (1) on the first three "B" letters in a region sustaining an objection to the state's permit decision, thus transferring the permit to the Corps of Engineers, and (2) on the first three "B" letters allowing the state to issue a permit over the objections of the Corps of Engineers, U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.
- e. For permits reviewed after the concurrences in 3.d above are complete, regions shall keep the director of the wetlands division informed about "A" letters and potential "B" letters in accordance with coordination procedures developed by the director and the regions.
- f. Regional administrators must obtain the concurrence of the Assistant Administrator for Water, the Assistant Administrator for Enforcement and Compliance Assurance or designee, and the General Counsel prior to approving state program submissions. Concurrence may be waived by memorandum; however, each waiver must be authorized by the Assistant Administrators for Water and Enforcement and Compliance Assurance and the General Counsel. The regional administrator is responsible for maintaining a record of any waivers of this limitation and sending a copy of the waiver to the management and organization division.
- g. Concurrence by the Assistant Administrator for Enforcement and Compliance Assurance or designee is only required when these permits involve enforcement issues.

4. REDELEGATION AUTHORITY

- a. The authority in paragraph 1.a that is delegated to the Assistant Administrator for Water is redelegated to the Director, Office of Wetlands, Oceans and Watersheds, and may be

- re delegated to the appropriate division director within the Office of Wetlands, Oceans and Watersheds and may not be re delegated further.
- b. The authority in paragraph 1.a that is delegated to the regional administrators, and the authorities in paragraphs 1.c and 1.d may be re delegated to the appropriate division director within each region and may not be re delegated further.
 - c. The authority in paragraph 1.b to send the coordinated federal comment ("A" letter) to the state permitting agency may be re delegated to the appropriate section chief in each region and may not be re delegated further.
 - d. The authority in paragraph 1.b to send the letter sustaining the outstanding federal objection ("B" letter) may not be re delegated; the authority to send the letter removing the outstanding federal objection ("B" letter) may be re delegated to the appropriate division director in each region and may not be re delegated further.
 - e. The authorities in paragraph 1.e may be re delegated to the regional wetlands coordinator within each region and may not be re delegated further.
 - f. The authority in paragraphs 1.f and 1.g may not be re delegated.
 - g. The authority in paragraph 1.h is re delegated to the Director, Office of Wetlands, Oceans and Watersheds and may be re delegated to the regulatory activities division director within the Office of Wetlands, Oceans and Watersheds and may not be re delegated further.
 - h. The authority in paragraph 1.i may be re delegated to the appropriate section chief within each region and may not be re delegated further.
 - i. An official who re delegates an authority retains the right to exercise or withdraw the authority. Re delegated authority may be exercised by any official in the chain of command to the official to whom it has been specifically re delegated.

5. ADDITIONAL REFERENCES

- a. 40 CFR Part 30, 31
- b. EPA Order 1000.23
- c. Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency concerning the determination of the geographic jurisdiction of the Section 404 program and the application of the exemptions under Section 404(f) of the *Clean Water Act*, dated January 19, 1989.