

93rd Arkansas General Assembly: Arkansas Authority to Seek Delegation/Section 404 Clean Water Act Program (UPDATE)



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As previously noted, House Bill 1261 (“HB 1261”) was introduced on January 25th which would authorize the Arkansas Water Control Agency (i.e., Arkansas Department of Energy and Environment – Division of Environmental Quality [“DEQ”]) to seek and accept delegation of the Section 404 Clean Water Act program. (See previous post [here](#).)

The bill would add an additional section to Arkansas Code § 8-4-207(1) referencing the state water pollution control agency that would provide the DEQ Director authorization to:

. . . require conditions in permits issued under this chapter regarding the dredge and fill permitting program established in Section 404 of the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated under Section 404 of the Clean Water Act . . .

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into waters of the United States. These include wetlands. Activities in waters of the United States regulated pursuant to Section 404 include, for example:

- Fill for development
- Water resource projects (such as dams and levees)
- Infrastructure development
- Mining projects

Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States. Certain exemptions are provided by the statutory language for some farming and forestry activities.

No discharge of dredged or fill material may be permitted under the federal regulations if:

1. A practical alternative exists that is less damaging to the aquatic environment; or
2. Waters of the United States would be significantly degraded

Such proposed activities are regulated through a permit review process staffed by the United States Corps of Engineers (“Corps”).

Section 404(g)(1) provides states and tribes the opportunity to submit to EPA a request to assume administration of the Section 404 program in certain waters within state or tribal jurisdiction. The

regulations establishing the requirements for state or tribal assumption of the 404 Program are codified at 40 CFR Parts 232 and 233.

By way of update, HB 1261 was passed out of the House Public Health, Welfare and Labor Committee on February 9th. It subsequently passed out of the House and was transmitted to the Senate on February 10th. The bill will be considered in the Senate Public Health, Welfare and Labor Committee.