

Draft findings for SJ2: State assumption of 404 permitting

1. Congress passed the Clean Water Act in 1972, which mandates 404 permits for anyone placing dredged or fill material in a jurisdictional waterway.
2. Placing fill in streams and wetlands impacts water quality, water quantity, flood protection, and wildlife habitat.
3. The U.S. Army Corps of Engineers administers the 404 program in Montana, which overlaps to varying degrees with seven other permissions that must be obtained from six federal, state, and local agencies for activities in a stream.
4. The federal Clean Water Rule - and appeals to it - may impact the jurisdictional reach of 404 program.
5. The Environmental Protection Agency has process for a state to assume a 404 program.
6. Montana has previously explored assumption of the 404 program.
7. A state-issued 404 permit must be at least as rigorous as a Corps-issued permit.
8. State assumption of the 404 program is uncommon; two states have assumed most 404 permitting functions, while at least seven other states have formally explored assumption of their 404 program.
9. EPA has convened an advisory subcommittee to study state jurisdiction of waters.
10. The cost to run a 404 program roughly equivalent to the Corps is approximately \$1 million per year.
11. Department of Environmental Quality staff estimated it may take up to five years to prepare a 404 program.