

Clean Water Act Section 404 Assumption Feasibility Study for Minnesota

Project Work Plan

Minnesota Department of Natural Resources
Minnesota Board of Water and Soil Resources
Rev. January 19, 2016

Purpose

The purpose of this project is to comply with Minnesota Laws 2015 1st Special Session, Chapter 4, Article 4, Section 137, which requires the Board of Water and Soil Resources (BWSR) and the Department of Natural Resources (DNR) to study the feasibility of the state assuming the Clean Water Act Section 404 permitting program and report to the appropriate legislative committees and divisions by January 15, 2017 (Attachment A). In addition to the feasibility report, the agencies propose to provide recommendations based on the findings of the study.

Roles/Responsibilities/Process

Sponsoring Agencies – The DNR and the BWSR have overall responsibility for conducting the feasibility study and submitting a report to the legislature. Because the Minnesota Pollution Control Agency (PCA) has a significant role in the Section 404 permitting process (certifying that permits meet state water quality standards under Section 401 of the Clean Water Act), that agency is included as a sponsoring agency. Upper level managers (assistant commissioners, assistant director) from each of the agencies are responsible for the overall project and final approval of the study and any associated recommendations.

Project Management Team – Responsible for general project oversight and coordination, including developing and implementing a work plan and timeline. Some project management team members may participate in researching Section 404 assumption requirements and collecting or developing information needed to address each of the specified report elements. The project management team will also propose action recommendations to be considered by the agency managers. The project management team consists of the following:

Doug Norris, Wetland Program Coordinator, DNR, Ecological and Water Resources Division

(Project Lead –responsible for overall coordination and report writing)

Tom Hovey, Water Regulations Unit Supervisor, DNR, Ecological and Water Resources Division

Dave Weirens, Assistant Director, BWSR

Les Lemm, Wetland Conservation Act Coordinator, BWSR

Catherine Neuschler, Agency Rules Unit Supervisor, PCA

Additional state agency staff members and staff from local governments may be consulted or included in conducting the study as needed.

Federal Agency Consultants – Responsible for providing information on the federal requirements for Section 404 assumption and other implications of assumption related to federal programs, specifically as they relate to circumstances in Minnesota.

- U.S. Environmental Protection Agency representative
- U.S. Army Corps of Engineers, St. Paul District representative
- U.S. Fish and Wildlife Service
- USDA – Natural Resources Conservation Service representative (as needed)

Tribal Governments – All tribal governments in Minnesota will be consulted throughout the study to identify and address potential tribal concerns. When a state assumes the Section 404 program, it does not include lands within the exterior boundaries of tribal reservations. However, state assumption would have implications within the various treaty areas outside of the reservations.

Stakeholders – By law, stakeholders are to be involved in developing the plan of study, which will include assisting with problem identification and providing information and perspectives related to regulatory efficiency and resource protection associated with Section 404 assumption and alternatives to assumption. The following organizations, by interest sector, have been identified as stakeholders for the study:

Agriculture

- Minnesota Agricultural Water Resources Center
- Minnesota Farm Bureau Federation
- Minnesota Association of Wheat Growers
- Minnesota Corn Growers Association
- Minnesota Farmers Union
- Minnesota Soybean Growers Association

Business and Industry

- Aggregate Ready-Mix Assoc. of Minnesota
- Builders Association of Minnesota
- Builders Association of the Twin Cities
- Iron Mining Association of Minnesota
- Mining Minnesota
- Minnesota Association of Realtors
- Minnesota Chamber of Commerce
- Minnesota Timber Producers Association/Minnesota Forest Industries
- Association of General Contractors of Minnesota
- American Council of Engineering Companies of Minnesota

Environment/Conservation

- Audubon Minnesota
- Fish and Wildlife Legislative Alliance

Izaak Walton League - Minnesota Division
Minnesota Environmental Partnership
Minnesota Center for Environmental Advocacy
Minnesota Chapter of The Wildlife Society
Minnesota Conservation Federation
Minnesota Ducks Unlimited
Minnesota Sierra Club - North Star Chapter
Minnesota Waterfowl Association
Pheasants Forever
Water Legacy

Governmental

Association of Minnesota Counties
Minnesota Inter-County Association
Minnesota County Engineers Association
League of Minnesota Cities
Minnesota Association of Soil and Water Conservation Districts
Minnesota Association of Townships
Minnesota Association of Watershed Districts
Minnesota Department of Agriculture
Minnesota Department of Transportation
Minnesota Rural Counties Caucus

Other

Minnesota Wetland Professionals Association

Any organization or individual can request to be added to the stakeholder list. All stakeholders will be provided with opportunities to review and provide input on the plan of study as well as drafts of the feasibility study report and will otherwise be consulted as necessary.

Core Study Planning Group -- A series of four to five stakeholder meetings will be held over an approximate 18 month period to develop the plan of study and provide input as the study progresses. To ensure productive, workable meetings, a smaller (12 – 15 member) core study planning group will be formed to actively participate in the meetings. Representatives for the core study planning group were solicited and subsequently designated as follows:

Agriculture

Minnesota Agricultural Water Resources Center (2-3 representatives from constituent organizations)

Designates:

Joe Smentek, MN Soybean Growers

Doug Busselman, MN Farm Bureau

Warren Formo, MN Ag Water Resource Center

Business and Industry

Minnesota Chamber of Commerce (2-3 representatives from constituent organizations)

Designates:

Larry Kramka, Minn. Chamber of Commerce, Houston Engineering

Keith Hanson, Minn. Chamber of Commerce, Barr Engineering

Peter Miller, Minn. Chamber of Commerce, Wenck Associates

Environment/Conservation

Minnesota Environmental Partnership (2-3 representatives from constituent organizations)

Unaffiliated Organizations – Fish and Wildlife Legislative Alliance, Minnesota Ducks Unlimited,

Minnesota Waterfowl Association, Pheasants Forever, Minnesota Chapter of The Wildlife

Society (1-2 representatives will be selected from among these groups, based on expressed

interest)

Designates:

Brad Nylin, Minnesota Waterfowl Association

Barry Draskowski, Minnesota Division of Izaak Walton League of America

Scott Strand, Minnesota Center for Environmental Advocacy

Brian Ross, Ducks Unlimited

Governmental (one representative each)

Association of Minnesota Counties -- Designate: **Rich Sve**, Lake County Commissioner

Minnesota County Engineers Association -- Designate: **Lon Aune**, Marshall County Engineer

Minnesota Inter-County Association -- Designate: **Jim Foldesi**, St. Louis Co. Public Works Director

Minnesota Association of Soil and Water Conservation Districts -- Designate: **Sheila Vanney**

Minnesota Association of Watershed Districts -- Designate: **Ron Harnack**, Red River Watershed

Management Board (Alternate: Phil Belfiori, Rice Creek Watershed District)

Minnesota Department of Transportation -- Designate: **Lynn Clarkowski**, Director, MnDOT

Office of Environmental Stewardship

Other

Minnesota Wetland Professionals Association (one representative) – Designate: **Nick McCabe**

All stakeholders will be invited to the stakeholder meetings and have some opportunity to provide input. However, primary participation will be through the core study planning group.

Consultants/Contractors/Interns – Potential roles:

- Assist with meeting logistics and facilitation.

- Gather information, perspectives and advice on Section 404 assumption from other states that have assumed the program (Michigan, New Jersey) or are actively investigating assumption.
- Evaluate economic implications of Section 404 assumption (costs and savings that would accrue to affected units of government and permit applicants).

Timeline

November 2015	Project work plan finalized; all participants and stakeholders identified and confirmed
January 2016	Stakeholder meeting to discuss plan of study and provide input on problem identification and on each of the required elements of the study report
March 2016	Plan of study finalized and approved; RFPs prepared for any consulting/contracting elements
June 2016	Contracts awarded and work begins
September 2016	Contractor reports completed
October 2016	Draft study report prepared and distributed to stakeholders for review
October 2016	Stakeholder meeting to discuss draft study report
November 2016	Final draft study report prepared and distributed to stakeholders for review
November 2016	Study report finalized and approved by DNR commissioner and BWSR executive director
December 2016	Final study report submitted to BWSR Board for approval
January 15, 2017	Final study report submitted to legislative committees

Laws of Minnesota 2015 Special Session Chapter 4

Sec. 137. FEDERAL CLEAN WATER ACT SECTION 404 PERMIT PROGRAM FEASIBILITY STUDY.

(a) The Board of Water and Soil Resources and the commissioner of natural resources shall study the feasibility of the state assuming administration of the section 404 permit program of the federal Clean Water Act. The United States Army Corps of Engineers, St. Paul District; and the United States Environmental Protection Agency shall be consulted with during the development of the study. The study shall identify:

- (1) the federal requirements for state assumption of the 404 program;
- (2) the potential extent of assumption, including those waters that would remain under the jurisdiction of the United States Army Corps of Engineers due to the prohibition of 404 assumption in certain waters as defined in section 404(g)(1) of the federal Clean Water Act;
- (3) differences in waters regulated under Minnesota laws compared to waters of the United States, including complications and potential solutions to address the current uncertainties relating to determining waters of the United States;
- (4) measures to ensure the protection of aquatic resources consistent with the Clean Water Act, Wetland Conservation Act, and the public waters program administered by the Department of Natural Resources;
- (5) changes to existing state law, including changes to current implementation structure and processes, that would need to occur to allow for state assumption of the 404 program;
- (6) new agency responsibilities for implementing federal requirements and procedures that would become the obligation of the state under assumption, including the staff and resources needed for implementation;
- (7) the estimated costs and savings that would accrue to affected units of government;
- (8) the effect on application review and approval processes and time frames;
- (9) alternatives to assumption that would also achieve the goals of regulatory simplification, efficiency, and reduced permitting times;
- (10) options for financing any additional costs of implementation; and
- (11) other information as determined by the board and commissioner.

(b) The board and commissioner shall involve stakeholders in the development of the plan of study consistent with Minnesota Statutes, section 103B.101, subdivision 16 (*see Sec. 73, below*).

(c) By January 15, 2017, the board and commissioner must report the study to the legislative policy and finance committees and divisions with jurisdiction over environment and natural resources.