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Subject: EPA Announces Historic Approval of Florida's Request to Administer the Clean Water Act Section 404 Program

Newsroom: https://www.epa.gov/newsreleases/epa-announces-historic-approval-floridas-request-administer-clean-water-act-section-404

EPA Announces Historic Approval of Florida's Request to Administer the Clean Water Act Section 404 Program

WASHINGTON (December 17, 2020) — Today, the U.S. Environmental Protection Agency (EPA) announced that the State of Florida is the first state in more than 25 years to apply for and receive approval to implement a Clean Water Act (CWA) Section 404 program, joining Michigan and New Jersey as the only states in the country with such authority. Today's action formally transfers permitting authority under CWA Section 404 from the U.S. Army Corps of Engineers (Corps) to the State of Florida for a broad range of water resources within the State. This action allows the State to more effectively and efficiently evaluate and issue permits under the CWA to support the health of Florida's waters, residents, and economy.

"A considerable amount of effort has gone into Florida's assumption of the Clean Water Act 404 program," **said EPA Administrator Andrew Wheeler.** "Federal authorities don't delegate this type of permit often, but Florida has, beyond question one of the greatest environmental records of any state, and I couldn't be happier that Florida has shown it can meet the strict national standards EPA sets to protect human health and the environment."

"After a rigorous review, analysis and coordination process, EPA is pleased that the state of Florida will assume responsibility of its Clean Water Act Section 404 program," **said EPA Region 4 Administrator Mary S. Walker.** "This approval is truly a reflection of the high-level scientific and regulatory expertise of the environmental professionals at the state, federal and tribal levels who ensured a legally and technically sound program. This monumental milestone will allow Florida to administer this program to best fit enhanced protection of its natural resources."

EPA Administrator Andrew Wheeler made the announcement at a press conference with Florida Department of Environmental Protection (FDEP) Secretary Noah Valenstein, White House Council on Environmental Quality Chairman Mary Neumayr, U.S. Congressmen Mario Diaz-Balart (FL-25), Gus Bilirakis (FL-12), Dan Webster (FL-11), John Rutherford (FL-04), Michael Waltz (FL-06), and Greg Steube (FL-17), EPA Assistant Administrator for Water Dave Ross, Principal Deputy Assistant Secretary of the Army for Civil Works Ryan Fisher, EPA Region 4 Administrator Mary S. Walker, U.S. Fish and Wildlife Service (FWS) Director Aurelia Skipwith, and U.S. Department of the Interior Deputy Assistant Secretary for Water and Science Aubrey Bettencourt.

On August 5, 2020, EPA Region 4 Administrator Walker and FDEP Secretary Valenstein, signed a Memorandum of Agreement (MOA) as part of the assumption process. On August 20, 2020, Governor Ron DeSantis submitted a request for EPA to conduct a review and approve Florida's program to assume administration of the CWA 404 program. Florida's submission met the standards established under Section 404 of

the CWA and implementing regulations and will ensure the protection of Florida's aquatic resources equal to our better than the existing federal permitting program.

"Florida continues to be a pioneer of environmental protection. This is a historic moment for our agency and our state," **said FDEP Secretary Noah Valenstein**. "We appreciate EPA's stringent, public review and approval of DEP's assumption of this program. Our waters and wetlands are critical to our economy and way of life in Florida. As such, it is important for the state to be in charge and take the lead in their protection. We are pleased that with the assumption, Florida scientists and permitters will now be accountable for state and federal wetlands permits. DEP staff know the state's resources best and have the expertise to ensure their protection."

"Today's action is a great milestone for cooperative federalism," **said Secretary of the Interior David L. Bernhardt.** "I commend Administrator Wheeler who led this effort, and all who worked so hard to get to this point."

"This designation is great news for the State of Florida - it gives our state the ability to make the best decisions for our unique environment, with input from the public and environmental stakeholders. The duplicative rules on the state and federal levels were a waste of taxpayer dollars, and created confusion for everyone involved, which is why I fought to streamline this process. I will keep working to cut unnecessary government red tape and improve efficiency on every level of government, while also making sure our environment is protected for generations to come," **said U.S. Senator Rick Scott.**

"Today's announcement is a tremendous accomplishment for Florida, especially as we continue our Everglades restoration efforts," **said U.S. Congressman Mario Diaz-Balart (FL-25)**. "Allowing the state to take over the 404 permitting process will significantly streamline restoration projects, while still protecting the greater environment. I thank Administrator Wheeler and Regional Administrator Walker, as well as all the other key players who worked diligently to make this happen. I have no doubt that we will see the benefits of this decision for years to come."

"Today is a great day for Florida and everyone who cares about protecting our wetlands and clean water and streamlining government regulations. The Sunshine State has a strong track record of protecting our unique environment and Floridians care deeply about their environment and natural resources. Everglades restoration, key infrastructure projects, sustaining protections on wetlands and endangered species, and taxpayer dollars - are all beneficiaries of today's announcement. I thank Administrator Wheeler and look forward to continuing to work with him, Secretary Bernhardt and Secretary Valenstein to protect and support Florida's water, Floridians and our economy," **said U.S. Congressman Dan Webster (FL-11).**

"As Floridians, we understand the important role the environment plays in our economy and our way of life," **said Congressman John Rutherford (FL-04)**. "Today's announcement by Secretary Bernhardt and Administrator Wheeler is a big win for Florida, allowing our state to streamline permitting for water projects while continuing

to uphold the highest level of environmental standards. This is just another example of President Trump and Governor DeSantis's dedication to protecting Florida waters while reducing bureaucracy and making government run more efficiently."

"This Administration has done more for clean water in Florida than any other in modern history. Water quality has improved in the Everglades, across Florida's National Estuary Program network, and Harmful Algal Blooms are being targeted in Florida's springs and salt water ecosystems. Florida will do a better job at efficiently and effectively issuing permits for necessary infrastructure than the federal government has. State assumption of the permitting program will reduce project costs and save taxpayer dollars. As a next step, I'm looking forward to working with EPA on modernizing the Clean Water State Revolving Fund allocation which disadvantages states like Florida that have growing water infrastructure needs," **said U.S. Congressman Mike Waltz (FL-06)**.

"I thank Administrator Wheeler for his diligence on this historic accomplishment for Florida's infrastructure and water quality priorities. Without these unnecessary and duplicative permitting processes, projects of all sizes will be streamlined to maximize efficiency and our state will be given the flexibility to make our own decisions that are best suited for our environmental and economic interests," **said U.S. Congressman Greg Steube (FL-17).**

"President Trump has made it a priority of his Administration to pursue balanced water policies that protect our environment and meet the needs of the American people," **said CEQ Chairman Mary Neumayr.** "Today's historic announcement is a testament to what can be accomplished through efficient coordination across all levels of government, and I applaud EPA, the State of Florida, the Department of the Interior, and the U.S. Army Corps of Engineers on this achievement."

"The Army is pleased to support the State of Florida in its effort to balance environmental protection with economic development," **said Ryan Fisher, Principal Deputy Assistant Secretary of the Army for Civil Works**. "The citizens of Florida will have continued protections under the Clean Water Act with the benefit of infrastructure permitting decisions being made at the state level."

EPA solicited public review and comment on Florida's proposed program and engaged in extensive stakeholder outreach to ensure that all views were considered during the statutorily mandated 120-day decision period. EPA hosted two virtual public hearings during its review. Additionally, as part of the review process set forth by the CWA and its implementing regulations, EPA sought input from other applicable agencies and reviewed Florida's proposal for consistency with the CWA. EPA determined that the Florida has the necessary authority to operate a CWA Section 404 program and FDEP's program is consistent with and no less stringent than the requirements of the CWA and its implementing regulations.

Part of the review process included the development of a comprehensive Biological Evaluation of more than 200 endangered species throughout Florida. EPA also consulted

with FWS under Section 7 of the Endangered Species Act, resulting in the issuance of a Biological Opinion and Incidental Take Statement related to the approval and implementation of Florida's program. EPA also completed consultation under Section 106 of the National Historic Preservation Act, and entered into a Programmatic Agreement with FDEP, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation to ensure that historic properties and cultural resource concerns are addressed as part of Florida's program implementation.

Background

Section 404 of the CWA requires a permit before dredged or fill material may be discharged into waters of the United States. Section 404(g) of the CWA gives states and tribes the option of assuming, or taking over, the permitting responsibility and administration of the Section 404 permit program for certain waters. Section 404 permits for those assumed waters would be issued by the state or tribe instead of the Corps. The CWA provides that the Corps retains permitting authority in certain tidal waters and other specified waters that are currently used or may be used in the future to transport interstate or foreign commerce. State and tribal Section 404 programs must be at least as stringent as federal permitting.

State and tribal regulators are generally more familiar with local aquatic resources, issues, and needs. An efficient state- or tribal-run program can help reduce delays and save money for permit applicants. States and tribes can also integrate dredged and fill permitting with traditional water quality programs, such as monitoring and water quality standards, or state/tribal land use planning requirements. Under an assumed program, Section 404 permit applicants may need only a single state or tribal permit for dredged or fill material discharges. Since more than a dozen states and tribes currently administer dredged and fill programs separate from the federal program, assuming the Section 404 program allows states and tribes to streamline the review process and reduce unnecessary paperwork and duplication. It may also reduce the potential for conflict between federal and state or tribal decisions or permitting conditions.

More information: https://www.epa.gov/cwa404g/basic-information-about-assumption-under-cwa-section-404

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