

# Clean Water Act/Section 404 Program: Environmental Organizations Judicial Challenge to U.S. Environmental Protection Agency Delegation to Florida



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Earthjustice and a number of other environmental organizations filed a January 14th Complaint for Declaratory and Injunctive Relief (“Complaint”) challenging the United States Environmental Protection Agency’s (“EPA”) delegation of the Section 404 Clean Water Act program to the State of Florida. See Civil No. 21-cv-119.

The Complaint was filed in the United States District Court for the District of Columbia.

The other organizations involved in the Complaint include:

- Center for Biological Diversity
- Defenders of Wildlife
- Sierra Club
- Conservancy of Southwest Florida
- Florida Wildlife Federation
- Miami Waterkeeper
- St. Johns Riverkeeper

EPA published a December 22nd Notice in the Federal Register stating that the State of Florida has the necessary authority to operate a Clean Water Act Section 404 program in accordance with the requirements found in Section 404(g-1). As a result, EPA approved Florida’s assumption of the program. See 85 Fed. Reg. 83553.

Florida’s 404 program includes provisions for the issuance of both general and individual permits.

The only other states that have previously assumed 404 delegation are Michigan and New Jersey.

Earthjustice’s Complaint alleges that EPA’s approval of Florida’s application was unlawful. It argues that the state’s program is not as stringent as federal law. Further, the Complaint argues that:

. . . Underlying the EPA’s decision are unlawful actions by the U.S. Fish and Wildlife Service (“USFWS”), which has failed to ensure no jeopardy to listed species and creates an unlawful scheme for take liability coverage at the permit level, in contravention of the Endangered Species Act (“ESA”). . .

Additional cited concern is that the United States Army Corps of Engineers list of waters over which it will retain jurisdiction is arbitrarily and capriciously limited which violates both the Rivers and Harbors Act and the Administrative Procedures Act.

A copy of the Complaint can be downloaded [here](#).