

Clean Water Act/Section 404: Miccosukee Tribe of Indians of Florida Challenge U.S. Environmental Protection Agency Delegation to Florida



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08/15/2022

The Miccosukee Tribe of Indians of Florida (“Miccosukee”) filed an August 4th Complaint in the United States District Court for the Southern District of Florida against the United States Environmental Protection Agency (“EPA”) challenging the federal agency’s delegation of the Section 404 Clean Water Act Program to the State of Florida. See Case 1:22-cv-22459-KMM.

Miccosukee states the Complaint was filed to defend its sovereignty and authority against unlawful administrative diminishment and that it is a federally recognized Indian Tribe and a Tribal government.

EPA determined on December 22, 2020, that the State of Florida has:

... the necessary authority to operate a CWA Section 404 program in accordance with requirements found in CWA Section 404(g)(1).

Therefore, EPA undertook the final action to approve Florida’s assumption of the program. See 85 Fed. Reg. 83553.

Section 404 of the Clean Water Act authorizes the United States Army Corps of Engineers (“Corps”) to issue permits for the discharge of dredged or fill material. The Corps permitting program is commonly referred to as Section 404 or the 404 program.

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.

Florida had submitted on August 20, 2020, a request for assumption of the program. The only other states that had previously assumed 404 delegation are Michigan and New Jersey.

The Miccosukee Complaint argues that EPA’s delegation to Florida of the 404 program significantly restricts the ability of the Tribe and its members to exercise the rights granted to them by the United States. This is stated to include the prevention of Miccosukee and its members from obtaining one or more permits necessary to build homes for Tribal members on Indian lands.

In addition to discussing its status as a federally recognized Indian Tribe with jurisdiction over Indian lands, the Complaint also discusses:

- Rights and authority over lands beyond the boundaries of the federal reservation which include:
- Federal reservation
- Trust lands
- Reserved area
- Leased lands
- Reserved rights
- Fee simple lands

The Complaint also provides the Tribe's view on the effect of EPA's approval of Florida's assumption of the 404 permitting authority on waters on Indian lands.

The prayer for relief includes a request that the United States District Court declare that EPA's approval of Florida's assumption of the 404 program is arbitrary, capricious, and abuse of discretion or otherwise not in accordance with the law and procedural requirements.

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