

[CLEAN WATER ACT: Groups sue EPA for handing permit power to Fla. -- Thursday, January 14, 2021 -- www.eenews.net](https://www.eenews.net)

Groups sue EPA for handing permit power to Fla.

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The Everglades in Florida. Everglades National Park/Flickr

A coalition of environmental groups is suing EPA for approving Florida's bid to become the third state in history to take over wetlands regulation under the Clean Water Act.

The Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, the Conservancy of Southwest Florida, the Florida Wildlife Federation, Miami Waterkeeper and St. Johns Riverkeeper today filed the [suit](#) in the U.S. District Court for the District of Columbia against EPA and the Army Corps of Engineers, as well as officials from the Fish and Wildlife Service.

They argue that EPA's approval is "unlawful because the state's program is not as stringent as federal law and rests on unprecedented arrangements that violate federal law."

EPA approved the state's bid last month. EPA Administrator Andrew Wheeler at an event in Florida signed off on a memo approving the state's assumption and said Congress originally envisioned states assuming responsibility when creating the program under Section 404 of the Clean Water Act ([Greenwire](#), Dec. 17, 2020).

Under that section of the federal law, permits are approved for dredging and filling materials that end up in "waters of the United States," including wetlands.

Developers of real estate, energy projects, agricultural activities, shoreline restoration and even boat ramps use the program to obtain permits for discharging dredge or fill material into wetlands and streams that fall under federal jurisdiction. Developers of projects that affect state and federal jurisdictional wetlands or surface waters must currently obtain both a state permit and a Section 404 dredge or fill permit.

Under the Clean Water Act, states or tribes can seek to take over permitting and administering the Section 404 program. Before approving such a request, EPA must determine whether a state has a sufficient program to implement and enforce the federal 404 permitting program.

To date, only Michigan and New Jersey have done so. The Army Corps of Engineers retains permitting authority in the rest of the country, and EPA reserves the power to veto those permits.

Environmental groups claim that the state of Florida doesn't have the resources it needs to shoulder the program and that EPA fast-tracked the approval, ignored tribal and public input, and violated several federal laws.

"For decades, Florida has failed miserably under the Clean Water Act to protect our estuaries, local communities and economy from harmful algae blooms. For the Trump administration to now hand over wetlands oversight to the same underfunded, understaffed state regulators adds insult to injury, and will result in accelerated destruction of wildlife habitat and worsen water quality," said Jason Totoiu, a senior attorney at the Center for Biological Diversity. "We can only hope the Biden administration restores the rule of science and puts an end to this boondoggle."

But Florida Department of Environmental Protection Secretary Noah Valenstein said at the event last month that he has more than 200 staff members dedicated to wetlands permitting, and that their ability to oversee wetland permits will speed up not only private development but also restoration projects, including those to deal with algal blooms stemming from the waters of Lake Okeechobee.

Valenstein also said the new arrangement doesn't remove federal oversight or Clean Water Act protections, but it will allow state officials to push forward permits for projects like the Everglades Agricultural Area Reservoir.

A spokesperson said the agency "does not comment on pending litigation."

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