

# The Clean Water Act & Permitting Responsibility

## BACKGROUND

**The Clean Water Act (CWA)** allows states and tribes to assume permitting responsibility for and administration of the Section 404 permit program for certain waters, which are otherwise performed by the US Army Corps of Engineers.

Importantly, CWA permits are not only required for private sector projects, but also for governmental ones, including many projects dealing with environmental restoration, roads and highways, and other public works undertaken by local, state and federal governments.

Almost four years ago, the US Environmental Protection Agency (EPA) delegated responsibility for CWA Section 404 permitting to the Florida Department of Environmental Protection (FDEP). The FDEP assumed authority over discharges to “assumable” waters which are primarily non-coastal waters. In so doing, EPA determined that Florida’s permitting program is consistent with and no less stringent than the requirements of the CWA and its implementing regulations.

In the years since, the FDEP-run program has proven both more efficient and stricter. According to a Bloomberg Law [article](#) dated April 18, 2023, the FDEP has approved fewer permits than prior program administrators, while permit application processing time has improved as well.

## BENEFITS OF FDEP ADMINISTRATION

**According to the EPA**, having the FDEP administer this permitting process, rather than the U.S. Army Corps of Engineers, has several important advantages, including:

- State and tribal regulators are generally more familiar with local aquatic resources, issues, and needs.
- State and tribal regulators can more effectively and efficiently evaluate and issue permits under the CWA to support the health of Florida’s waters, wildlife, residents, and economy.
- States and tribes can also integrate dredge and fill permitting with traditional water quality programs, such as monitoring and water quality standards, or state/tribal land use planning requirements.
- State administration of the permitting program streamlines the review process and reduces delays, costs and unnecessary paperwork and duplication.
- State administration may also reduce the potential for conflict between federal and state or tribal decisions or permitting conditions.

## RECENT DEVELOPMENT

**Soon after EPA's approval,** several environmental groups sued in Federal Court to remove this permitting responsibility from the FDEP and return it to the U.S. Army Corps of Engineers. Last week, a Washington, DC-based federal judge sided with these groups, putting this program and its many benefits in jeopardy. The judge left the door open for EPA and FDEP to file for a limited stay of his action.

## THIS RULING WILL HARM FLORIDIANS

**Harming Environmental Restoration Projects.** Most large-scale environmental restoration projects require permits under the CWA. Returning to the old system of separate federal and state permitting processes will create harmful delays and increase costs, which will not only delay but potentially derail Everglades restoration projects and other environmental restoration projects throughout the state.

**Making Housing Less Affordable.** Florida is experiencing an unprecedented influx of new residents, which is depleting the availability of quality, affordable housing in the state. Delays caused by duplicative permitting processes will hamper getting homes to market and drive up the cost of building them, leading to higher housing prices for everyone.

**A Return to Higher Inflation.** Producing the commodities that farmers, builders and manufacturers rely on involves this type of permitting. Creating needless delays and unwarranted costs in the permitting process could result in COVID-style supply chain disruptions that will reduce the availability of essential products and increase costs for consumers.

**Jeopardizing Jobs.** This sudden and dramatic shift in the permitting process will delay projects that rely on these permits and threaten the jobs of thousands of Floridians.

**Delaying Critical Infrastructure Projects.** This change in the permitting process would not only create delays for the private sector (and the countless essential materials it supplies to governments), it would also increase the time and costs required for governments to build roads, bridges, and other critical public works.