

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

JUN 15 2011

Mr. Jo Wayne Strack
Strack Excavating, LLC
5120 State Highway 74
Cape Girardeau, MO 63701

Cape Girardeau County
2011-279/CES002635
Nationwide Permit 39

RE: Authorization to Conduct Site Grading on Approximately 22.4 Acres of Land for Conversion of Property into Commercial Use in Section 20, Township 32 North, Range 13 East in Cape Girardeau County

Dear Mr. Strack:

The Missouri Department of Natural Resources' Water Protection Program (Department) has reviewed your request for Clean Water Act Section 401 Water Quality Certification (certification) to accompany the Army Corps of Engineers' Nationwide Permit 39 for "Commercial and Institutional Developments." The Department did not approve certification of Nationwide Permit 39, which means all projects covered under this permit must be reviewed and approved for individual certification.

After further review of your proposed project, this office certifies that the project will not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in the Water Quality Standards, 10 CSR 20-7.031, provided the following and enclosed conditions are met:

- Adverse impacts to 0.17 acre of wetland shall be compensated for as stated in the Army Corps of Engineers' project authorization letter dated May 16, 2011. The permittee shall purchase 0.51 wetland credits from the Rosedale Wetland Mitigation Bank. A copy of the purchase document shall be supplied to the 401 Certification Unit, Missouri Department of Natural Resources, Water Protection Program, Permits and Engineering Section, P.O. Box 176, Jefferson City, MO 65102-0176.

Missouri Clean Water Law, Chapter 644.052.9 RSMo, gives the Department the authority to collect a fee for the issuance of a certification. As of January 1, 2011, this authority has expired, which means the Department no longer has statutory authority to collect water permit fees. This includes the certification fee. Please do not send a payment to the Department.

Mr. Jo Wayne Strack

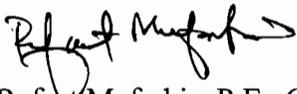
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You may appeal to have the matter heard by the Administrative Hearing Commission (commission). To appeal, you must file a petition with the commission within thirty (30) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

This certification is part of the Army Corps of Engineers' permit. Water Quality Standards must be met during any operations authorized by these permits. If you have any questions, please contact Ms. Carrie Schulte by phone at (573) 751-7023, by e-mail at carrie.schulte@dnr.mo.gov, or by mail at the above referenced address. Thank you for working with the Department to protect our environment.

Sincerely,

WATER PROTECTION PROGRAM



Refaat Mefrakis, P.E., Chief
NPDES Permits and Engineering Section

RM:csp

Enclosure

c: Mr. Shawn Sullivan, Army Corps of Engineers, St. Louis District
Mr. Brad Ledbetter, Southeast Regional Office
Ms. Pamela Foster, Southeast Regional Office
Mr. Chris Buerck, Bowen Engineering & Surveying, Inc.
File Copy



WATER PROTECTION PROGRAM
Missouri General Water Quality Certification Conditions for NWP 39
(Commercial and Institutional Developments)

Pursuant to Section 401 of the Clean Water Act of 1972 the following best management practices are included as conditions in Section 404 of the U.S. Army Corps of Engineers' (Corps) Nationwide Permit (NWP). These conditions ensure that maintenance activities do not violate the Water Quality Standards of the State of Missouri resulting in permanent damage to habitat, increased turbidity, reduced bank and channel stability, and impacts to the biological and chemical integrity of the water body. Jurisdictional definitions for this activity are explained in the NWP.

1. NWPs shall not allow the filling of jurisdictional springs.
2. Acquisition of a NWP(s) and attendant water quality certification(s) shall not be construed or interpreted to imply the requirements for other permits are replaced or superceded. Any National Pollutant Discharge Elimination System (NPDES) Permits, Land Disturbance General Permits, or other requirements shall be complied with. Applicants with questions are encouraged to call the Water Protection Program, NPDES Permits and Engineering Section, at (573) 526-3589.
3. Care shall be taken to keep machinery out of the waterway as much as possible. Fuel, oil and other petroleum products, equipment and any solid waste shall not be stored below the ordinary high water mark at any time or in the adjacent floodway beyond normal working hours. All precautions shall be taken to avoid the release of wastes or fuel to streams and other adjacent water bodies as a result of this operation.
4. Petroleum products spilled into any water body or on the banks where the material may enter waters of the state shall be immediately cleaned up and disposed of properly. Any such spills of petroleum shall be reported as soon as possible to the Missouri Department of Natural Resources' 24-hour Environmental Emergency Response number at (573) 634-2436.
5. Only clean, nonpolluting fill shall be used. The following materials are not suitable for bank stabilization and shall not be used due to their potential to cause violations of the general criteria of the Water Quality Standards, 10 CSR 20-7.031(3)(A)–(H):
 - a. Earthen fill, gravel, broken concrete where the material does not meet the specifications outlined below, and fragmented asphalt, since these materials are usually not substantial enough to withstand erosive flows;
 - b. Concrete with exposed rebar;
 - c. Tires, vehicles or vehicle bodies, construction or demolition debris are solid waste and are excluded from placement in the waters of the state;
 - d. Liquid concrete, including grouted riprap, if not placed as part of an engineered structure; and
 - e. Any material containing chemical pollutants (for example: creosote or pentachlorophenol).

Recycled or broken concrete may be used provided that it is reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Applicants must break all large slabs to conform to the well-graded requirement. Generally, the maximum weight of any piece shall not be more than 500 pounds. Gravel and dirt shall not exceed 15 percent of the total fill volume. All protruding reinforcement rods, trash, asphalt and other extraneous materials must be removed from the broken concrete prior to placement.

Recycled or broken concrete being used simply as fill need not conform to the well-graded requirement. It shall, however, be free of extraneous materials and shall be placed to eliminate voids within the fill.

6. Clearing of vegetation/trees shall be the minimum necessary to accomplish the activity. A vegetated corridor shall be maintained from the high bank on either side of the jurisdictional channel to protect water quality and to provide for long-term stability of the stream channel, unless physical barriers prevent such a corridor. For purposes of this NWP, lack of ownership or control of any portion of this corridor may be considered a legitimate and discretionary cause to waive this requirement on that portion.
7. This water quality certification is not valid for any Section 404 permit issued on a water body that:
 - a. Is listed as impaired pursuant to Section 303(d) of the Clean Water Act;
 - b. If the activities are located in or occur within two miles upstream of a designated outstanding state or national resource area (10 CSR 20-7.031); or
 - c. If the activities are located in a designated metropolitan no-discharge stream.
 - d. Has a United States Environmental Protection Agency approved Total Maximum Daily Load (TMDL).

The 303(d) listed waters can be found at

<http://www.dnr.mo.gov/env/wpp/waterquality/303d.htm>.

"Outstanding National/State Resource Waters" and "Metropolitan No-Discharge Streams" can be found in 10 CSR 20-7.031, Tables D, E and F or at

<http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7.pdf>.

The TMDL listed waters can be found at <http://www.dnr.mo.gov/env/wpp/tmdl/wpc-tmdl-EPA-Appr.htm>.

If more detail than what is provided at these websites is needed to precisely pinpoint your location, please call (573) 522-2552.

8. Streambed gradient shall not be permanently altered during project construction.

9. NWPs involving a loss of more than 1/10 acre of wetlands with a predominance of bottomland hardwoods that are comprised mainly of different species of gum, oak and bald cypress shall require individual water quality certification by the state.
10. NWPs issued by the Corps for which the 300 linear feet threshold for stream impacts is waived by the district engineer on classified water bodies as defined by 10 CSR 20-7.031 shall require individual water quality certification by the state.
11. No project under a NWP shall accelerate bed or bank erosion.
12. Planting of any required vegetated buffer shall maximize the use of native, flood tolerant species to provide soil stabilization and wildlife benefits. Invasive, non-native species are prohibited.
13. Pursuant to Chapter 644.038, RSMo, the department certifies all NWPs for impacts in all waters of the state without the above-stated or any other conditions for the construction of highways and bridges approved by the Missouri Highway and Transportation Commission.