



Missouri Department of Natural Resources

PUBLIC NOTICE

DRAFT CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

DATE: November 2, 2009

In accordance with the state Clean Water Law, Chapter 644, RSMo, Missouri Clean Water Commission regulation 10 CSR 20-7.031(2)(D), the federal Clean Water Act, and the Missouri Antidegradation Rule, the applicants listed herein have applied for authorization to discharge to waters of the state. The proposed Clean Water Act Section 401 Water Quality Certification (certification) for these activities apparently will not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in Water Quality Standards, 10 CSR 20-7.031.

On the basis of preliminary staff review and the application of applicable standards and regulations, the Missouri Department of Natural Resources (Department), as administrative agent for the Missouri Clean Water Commission, proposes to issue a certification subject to certain conditions. The proposed determinations are tentative pending public comment.

Persons wishing to comment on the proposed certification conditions are invited to submit them in writing to the Missouri Department of Natural Resources, Water Protection Program, NPDES Permits and Engineering Section, 401 Unit, P.O. Box 176, Jefferson City, MO 65102. **Please include the certification number in all comment letters.**

Comments should be confined to the issues relating to the proposed action and certification(s) and the effect on water quality. The Department may not consider as relevant comments or objections to a certification based on issues outside the authority of the Missouri Clean Water Commission, (see Curdt v. Mo. Clean Water Commission, 586 S.W.2d 58 Mo. App. 1979).

All comments must be postmarked by November 17, 2009 or received in our office by 5:00 p.m. on November 20, 2009. The Department will consider all written comments, including e-mails, faxes and letters, in the formulation of all final determinations regarding the applications. If response to this notice indicates significant public interest, a public meeting or hearing may be held after due notice for the purpose of receiving public comment on the proposed certification or determination. Public hearings and/or issuance of the certification will be conducted or processed according to 10 CSR 20-7.031.

Additional certification information including copies of applicable regulations are available for inspection and copying at the Department's website at <http://www.dnr.mo.gov/env/wpp/401/401-pn.htm>, or at the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Mr. Bill Goodwin
Missouri Department of Conservation
P.O. Box 180
Jefferson City, MO 65102-0180

Phelps County
2009-01412/CEK006504
Nationwide Permit 27

RE: Bohigian Conservation Area Stream Habitat Enhancement Project in Mill Creek in
Section 8, Township 36 North, Range 9 West in Phelps County

Dear Mr. Goodwin:

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 27 for "Aquatic Habitat Restoration, Establishment and Enhancement Activities." Because the proposed project is within an Outstanding State Resource Water, an individual certification is being issued.

Missouri Department of Conservation is proposing instream placement of boulder fields using one ton boulders under-bank installation of box "sky hook" structures topped with MODOT #2 rock on top of "wooden box structure Lunker Units." Wing deflector rock vanes will be constructed with MODOT #2 rock with excavation to key into the stream bank. The purpose of this project is to sustain the wild trout population. Enclosed is "Bohigian Conservation Area Instream Habitat Enhancement Project Alternatives Analysis," which has the description and alternative analysis for the proposed project.

After further review of your application, this office certifies that the proposed 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 conditions are met.

1. No degradation, except for temporary degradation, shall be caused by this activity.
2. Use Best Management Practices during project activities to limit the amount of sediment into the waterway. Work in a waterway shall be conducted during low flow whenever possible, and all precautions shall be taken to avoid the release of fuel to streams and other adjacent waters as a result of the project.
3. Clearing of vegetation/trees shall be the minimum necessary to accomplish the activity. The riparian area, banks, etc., shall be restored to a stable condition to protect water

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quality as soon as possible. Seeding/planting of native vegetation, mulching and needed fertilization shall be within three days of final contouring, or as soon as possible as seasonal timing permits.

Pursuant to Chapter 644.052.9, RSMo, commonly referred to as the Missouri Clean Water Law, this certification requires payment of a fee of seventy-five dollars (\$75.00). A SAM II interagency invoice containing the necessary information to complete the payment process will be mailed to you within approximately five (5) days. Please complete entry for payment as soon as possible. The object code for this fee is 2544. You may proceed with your project at this time.

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.

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 Missouri Department of Natural Resources, Water Protection Program, NPDES Permits and Engineering Section, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you for working with the Department to protect our environment.

Sincerely,

WATER PROTECTION PROGRAM

**BOHIGIAN CONSERVATION AREA
INSTREAM HABITAT ENHANCEMENT PROJECT ALTERNATIVES ANALYSIS
PHELPS COUNTY, MISSOURI**

Mill Creek flows through the Bohigian Conservation Area. The trout population in the stream is reputed to be a self sustaining wild trout population derived from stockings provided by the old Missouri Fish and Game Commission. Because of past land uses the limiting riparian corridor survival and reduced spring recharge, water temperature have become elevated. The stream channel has been manipulated in the past resulting in loss of meanders and instream pools and structures. To replace lost instream habitat provide by natural windfalls and a meandering channel instream structures have been added over the last several years. This will be the third installment year of these projects on different reaches of stream.

Preferred Alternative: Install instream structures including boulder fields, under bank 'skyhook' timber boxes and deflector vanes to restore meandering channel. Riparian corridor reestablishment is planned to complement the constructed habitat changes in an effort to improve stability and reduce water temperature.

Second Alternative: Leave un-altered. Some natural meandering may occur and as regenerating trees grow large enough to provide cover some will fall into the stream providing habitat. Shading will occur over the long haul as trees regenerate. This alternative will take a numerous years to occur and in the meantime water temperatures may become elevated enough to eliminate trout survival.

No federally listed threatened, endangered or candidate species will be affected by the proposed project.

A cultural resources review indicates the activities will have minimal potential to impact cultural resource because activities are primarily instream or in the immediate stream bank.

Adverse impacts are limited to minor disturbance of stream banks, instream equipment work and are temporal in nature. Resulting long term benefits outweigh short term impacts. Proposed activities will have positive impacts to stream environment and function acting to mitigate for temporal impacts of project installation.