

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

January 9, 2013

Water Quality Certification for the Jameson Island Shallow Water Habitat Project

Issue: Changes to the project have been considered, and feasible revisions to one of the alternatives are consistent with project goals and water quality considerations. The Commission rescinded the previous order and directed staff to issue a 30-day public notice of a draft water quality certification for the project. The public notice was issued November 30, 2012. All comments must be postmarked by December 31, 2012, or received in the Water Protection Program office by 5:00 p.m. on January 3, 2013.

Background: This is a continuation of the matter that has been before the Commission several times this year. The Commission has reviewed the application from the U.S. Army Corps of Engineers (Corps), held a hearing and toured the project area. The Department has worked with the Corps toward modifications of the project so that it is consistent with the nine principles outlined by the Department at the June 11, 2012, public hearing. The public notice of the water quality certification is attached.

Recommended Action: Approve the draft water quality certification.

Suggested Motion Language: I move that the direct staff to issue the water quality certification as drafted.

List of Attachments:

- Draft water quality certification place on public notice November 30, 2012.



Missouri Department of Natural Resources

PUBLIC NOTICE

DRAFT CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

DATE: November 30, 2012

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, Operating Permits Section, 401 Unit, P.O. Box 176, Jefferson City, MO 65102. **Please include the Certification No. CEK006872 in all comment letters.**

Comments should be confined to the issues relating to the proposed action and certification 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 Curd v. Mo. Clean Water Commission, 586 S.W.2d 58 Mo. App. 1979).

All comments must be postmarked by December 31, 2012, or received in our office by 5:00 p.m. on January 3, 2013. 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 20-6.060 and 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 65102-0176 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Colonel Anthony J. Hofmann
Kansas City District
U.S. Army Corps of Engineers
601 E 12th St., Ste. 402
Kansas City, MO 64106

Saline County
2011-1602/CEK006872

Dear Colonel Hofmann:

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' Permit No. 2011-1602 in which the U.S. Army Corps of Engineers (Corps) proposes to restore shallow water habitat (SWH) on the U.S. Fish and Wildlife Service, Big Muddy National Fish and Wildlife Refuge, Jameson Island Unit by constructing a chute approximately 6,000 feet long by approximately 75 feet wide, and excavated to a depth of -5 foot from the Construction Reference Plane. The existing chute would be extended to the west where another outlet to the Missouri River would be constructed.

Heavy construction equipment would be used for initial clearing/grubbing to a maximum cleared width of 200 feet. The existing chute outlet would be diverted with a closure structure constructed with clean rock riprap to +5 Construction Reference Plane. Through time and dependent on river levels the chute would be expected to widen and deepen through natural river processes resulting in approximately 30 acres of SWH (27 acre chute and 3 acre backwater).

The project is part of the Missouri River Recovery Program which is authorized under the Water Resources Development Act of 2007. A component of the Missouri River Recovery Program which addresses fish and wildlife habitat mitigation, including SWH, is the Missouri River Bank Stabilization and Navigation Fish and Wildlife Mitigation Project (Mitigation Project) which is authorized in the Water Resources Development Acts of 1986 and 1999 (Public Law 99-662).

This activity is regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 USC 1344). The Jameson Island Unit Project would help meet SWH goals contained in the U.S. Fish and Wildlife Service's 2003 Amendment to the 2000 Biological Opinion (Bi-Op) on the Operation of the Missouri River Main Stem Reservoir System, Operation and Maintenance of the Missouri River Bank Stabilization and Navigation Project, and Operation of the Kansas River Reservoir System.

Based on National Wetlands Inventory maps this area at full chute development includes a total of 8.9 acres of wetland (3.74 acres freshwater emergent marsh, 3.45 acres freshwater forested/shrub wetland, 1.75 acres freshwater pond). No compensatory mitigation measures are proposed since approximately 27 acres of the 34.4 acre cleared area would be developed into SWH, a benefit to the Missouri River aquatic ecosystem, including the federally-listed endangered pallid sturgeon.

The project is located in and along the right descending bank of the Missouri River between River Mile 211.7 and 210.5 in Sections 30 and 31, Township 50 North, Range 18 West near the town of Arrow Rock, Saline County, Missouri.

This certification is being issued under Section 401 of Public Law 95-217, The Clean Water Act of 1977 and subsequent revisions. 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. Mechanical excavation shall be used to remove the soil above the ordinary high water mark to create the 75 foot channel bottom width, with the top 3 feet deposited beyond the chute meander belt area. The soil below the top 3 feet and above the ordinary high water mark shall be side cast within the meander area.
2. Hydraulic dredging may be used to excavate soil below the ordinary high water mark, with this material mixing with the existing Missouri River water and sediment load. The Corps shall hydraulically dredge according to the Dredge Discharge Schedule established in the Project Implementation Report. During hydraulic dredging, the Corps shall place the end of the submerged discharge pipe at a location in the water column where mixing and integration into the bed load will occur quickly.
3. Water quality and geomorphic sampling shall be done in accordance with a Monitoring Plan approved by the Department prior to construction. The Corps shall monitor the shallow water habitat creation for a period of 3 years post-construction, and after that date as conditions warrant. Should any contaminants of concern be found or water quality criteria exceeded, the Corps shall consult with the Department on appropriate actions. Report monitoring results and analysis to the Department every December 31.
4. A Total Maximum Daily Load (TMDL) was approved for Chlordane and Polychlorinated Biphenyls (PCBs) on November 3, 2006, and allocations were set at zero pounds per day. There shall be no deposition or disposal of Chlordane or PCB contaminated sediment in the river. Chlordane or PCB contained sediment shall be disposed of at an appropriate off-river disposal facility.
5. No water quality sample shall exceed the numeric nitrate criteria for the protection of drinking water supplies.

6. Maintenance shall be conducted as needed in a timely manner, so as to prevent exceedances of Missouri's Water Quality Standards, 10 CSR 20-7.031.
7. The Corps shall avoid any practices other than those identified in this certification that have the potential to cause violations of the Missouri Water Quality Standards general criteria, 10 CSR 20-7.031(3)(A)-(H).
8. Construction and maintenance of the SWH shall not contribute to erosion of the left descending bank of the Missouri River or other adjoining land.
9. The applicant shall maintain the control structure to ensure that flow through the chute does not exceed design criteria and to ensure that water quality standards are not exceeded.
10. Public health, existing in-stream water uses, and a level of water quality necessary to protect those uses shall be maintained and protected per 10 CSR 20-7.031(2) Antidegradation.
11. Operations in the Missouri River shall be conducted such that there will be no unreasonable interference with navigation by the existence or use of the activity.
12. Water supply intakes or other activities, which may be affected by suspended solids and turbidity increases, shall be investigated and sufficient notice given to the owners to allow preparation for any changes in water quality. Please contact Mr. Ken Tomlin of the Department's Water Protection Program's Public Drinking Water Branch at (573) 526-0269 for additional information.
13. Acquisition of a certification shall not be construed or interpreted to imply the requirements for other permits are replaced or superseded, including Clean Water Act Section 402 National Pollutant Discharge Elimination System Permits for land disturbance or return water from material deposition, such as MO-G698 Dredging and aggregate mining on the Missouri and Mississippi Rivers. Permits or any other requirements shall remain in effect. Any land disturbance activities disturbing one or more acres of total area for the entire project requires a stormwater permit for land disturbance activities. Applicants with land disturbance permitting questions are encouraged to visit <http://www.dnr.mo.gov/env/wpp/epermit/help.htm>, or call the Department's ePermitting Technical Customer Assistance toll free number at (855) 789-3889.
14. Petroleum products spilled into any water 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, but no later than 24 hours after discovery to the Missouri Department of Natural Resources' Environmental Emergency Response number at (573) 634-2436.

15. Clearing of vegetation/trees shall be the minimum necessary to accomplish the activity.
16. Representatives from the Department shall be allowed on the project property to inspect the authorized activity at any time deemed necessary to ensure compliance with permit conditions.
17. You must submit a copy of the signed "Compliance Certification" as proof of project completion when the original is submitted to the Corps. This document is to be sent to the Department at the address below or electronically to wpse401cert@dnr.mo.gov.
18. Best Management Practices shall be used during all phases of the project.
19. The certification is based on the plans as submitted. Should any plan modifications occur, please contact the Department to determine whether the certification remains valid or may be amended or revoked.

Pursuant to Chapter 644.052.9, RSMo, commonly referred to as the Missouri Clean Water Law, this certification shall be valid only upon payment of a fee of seventy-five dollars (\$75.00). The enclosed invoice contains the necessary information on how to submit your fee. Payment must be received within fifteen (15) days of receipt of this certification. Upon receipt of the fee, the applicable office of the Corps will be informed that the certification is now in effect and final.

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 Corps' permit. Water Quality Standards must be met during any operations authorized. If you have any questions, please contact Ms. Stacia Bax by phone at (573) 526-4586, by e-mail at stacia.bax@dnr.mo.gov, or by mail at the Missouri Department of Natural Resources, Water Protection Program, Operating Permits 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