

Clean Water Act Section 401 Certification Program

Stacia Bax, Environmental Supervisor
Chapter 6 Stakeholder Meeting
Feb. 2, 2018

Overview

- §401 Authority
- Reasoning for §401
- Staff
- Process
- Nationwide Permit Renewal
- Inspection and Enforcement
- Water Quality Certification Rule Revisions
- Questions?



§401 Authority

- Federal
 - Section 401 of Public Law 92-500, The Clean Water Act of 1972 and subsequent revisions
 - Authority given directly to states and tribes
- State
 - Missouri Revised Statutes Section 644.051
 - 10 CSR 20-6.060

Reasoning for §401

- State's certification that any federal action will protect water quality standards
 - Federal actions include, but are not limited to
 - Section 404 Department of the Army Permits
 - U.S. Coast Guard (USCG) Permits
 - Federal Energy Regulatory Commission (FERC) license
 - Federally Issued National Pollutant Discharge Elimination System (NPDES) Permits
- Federal permit or license not valid without state's certification or waiver

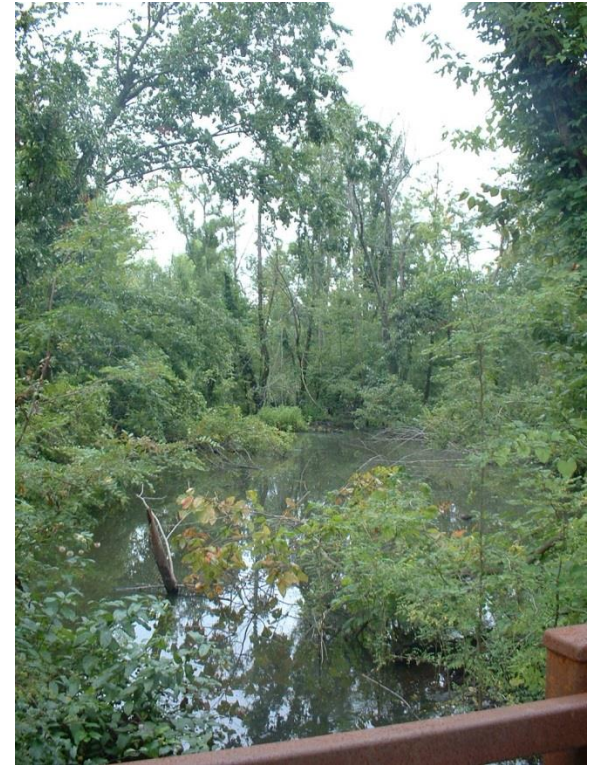
Staff

- §401 – Department of Natural Resources
 - Stacia Bax, unit chief and technical
 - Mike Irwin, technical lead
 - Billy Hackett, technical (~1/4 time)
 - Patricia Conger, clerical
 - Jessica Zimmer, clerical backup



Staff

- §404 – U.S. Army Corps of Engineers (USACE)
 - Kansas City District
 - Kansas City
 - Warsaw
 - Jefferson City
 - Rock Island District
 - St. Louis District
 - Memphis District
 - Little Rock District
 - Branson, Missouri
 - Walnut Ridge, Arkansas
 - Rogers, Arkansas





MISSOURI DEPARTMENT OF NATURAL RESOURCES

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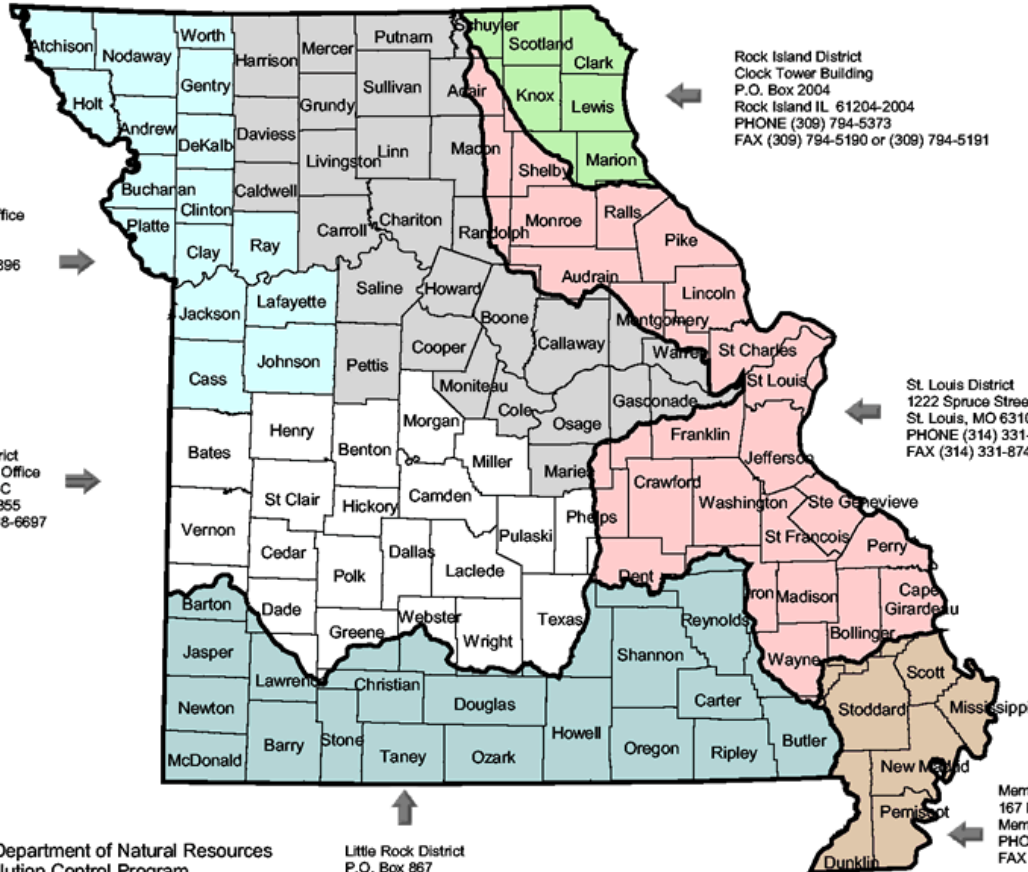
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Missouri Department of Natural Resources
Water Pollution Control Program
Planning/Modeling & GIS Unit
June 2003

§401 Process

- Application sent to federal agency
- Lead federal agency reviews request
 - Jurisdictional determinations
 - Determination of federal permit or license type
 - Missouri's General and Specific Conditions met?
 - Federal agencies can immediately issue a valid permit or license if state has pre-certified action
 - If individual certification is needed, federal agency or applicant requests state review
 - Occurs concurrently or after federal action

§401 Process

- §404 Permits and §401 Certifications

		USACE §404	DNR §401
Nationwide Permit	Non-reporting	No	No
	Pre-certified	Yes	No
	401 Condition not met	Yes	Yes
	Not pre-certified	Yes	Yes
Regional General Permit	Pre-certified	Yes	No
	401 Condition not met	Yes	Yes
	Not pre-certified	Yes	Yes
Individual Permit	Individual certification	Yes	Yes

§401 Process

- §401 staff schedules requests for certification
 - Basic information entered into tracking database
 - Reviewed in chronological order
 - GIS information and sensitive waters
 - Request more information, if necessary
 - Avoid and minimize – alternatives analysis
 - Compensatory mitigation – mitigation plan

Missouri Mitigation Methods

- USACE written, Interagency Review Team (IRT) input.
 - Stream
 - Introduced February 2007
 - Updated May 2013
 - Public Noticed
 - Wetland
 - Approved November 2017
 - Public Noticed
- Helps to provide statewide consistency.
 - Definitions, authorities, guidelines, policies
 - Worksheets
 - Adverse Impact Factors
 - Mitigation Credit Factors



§401 Process

- Certifications must be addressed within 60 days with one of the follow actions
 - Certified (with or without conditions)
 - Denied (with or without prejudice)
- Time extensions past 60 days must be agreed upon by all parties
- If not addressed within 60 days or by end of extension, automatic waiver of certification
 - Federal Clean Water Act = waiver after one year

§401 Process

- Email with electronic document(s) sent to
 - Respective DNR regional office
 - State & federal partner agencies
- §401 Water Quality Certification valid once fee received
- <http://www.dnr.mo.gov/env/wpp/401/index.html>



Nationwide Permit Renewal

- USACE §404 Nationwide Permits
 - Effective March 19, 2017
 - Valid for 5 years
 - Published in Federal Register
 - www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457
 - Missouri Regional Conditions
 - www.nwk.usace.army.mil/Portals/29/docs/regulatory/nationwidepermits/2017/2017NWP_MORegCon.pdf?ver=2017-03-17-114205-543
- State's §401 Water Quality Certification
 - For any federal action to protect water quality standards
 - Public Participation Process January 2016 – February 2017
 - dnr.mo.gov/env/wpp/permits/docs/pub02235.pdf

Inspection and Enforcement

- Regional office & resource agency staff and citizens are our eyes and ears in field
 - Call to verify if a project has proper approvals
 - Please report anything that appears amiss
 - Photos, description of activities, location, concerned citizen or landowner contact information
- The USACE and Environmental Protection Agency (USEPA) handle most enforcement actions



10 CSR 20-6.060 Water Quality Certification Rule Revisions

Purpose

- Update rule to include
 - Current practices and policies
 - Make clear the
 - Certification process
 - Documents required for a complete application
 - General conditions



Pre-Rulemaking Process/Timeline

- Stakeholder meetings
 - Water Protection Forum
 - 401 Water Quality Certification Subcommittee
 - Aug. 26, 2014
 - Oct. 20, 2014
 - Jan. 28, 2015
 - Red Tape Reduction
 - Feb. 2, 2018

Red Tape Reduction

- No additional or new burden as a result of changes
 - Additional language to provide clarification

Restrictive Words	New Version			Old Version		
	Applicant	Dept.	TOTAL	Applicant	Dept.	TOTAL
shalls	9	16	25	3	6	9
musts	2	2	4	0	2	2
may not	0	1	1	0	0	0
prohibited	0	0	0	0	0	0
required	7	3	10	2	2	4
TOTAL	18	22	40	5	10	15

Rulemaking Process/Timeline

- Regulatory Impact Report
- Small Business Impact Statement
- Proposed Rulemaking
 - Public comment period
 - Public hearing
- Order of Rulemaking
- Effective Rule



Proposed Changes

- Clarify what actions trigger need for water quality certification
- Missouri's general and specific conditions
 - Increase public participation process (public notices, meetings)
- Outline application process more clearly
 - What is required, when is an application complete, who does what action, etc.
- Add no net loss statement

Proposed Changes

- Outline requirements for antidegradation and analysis of alternatives
- Clarifications on the joint public notice
- Certification timeline
 - Per statute, must be addressed within 60 days
 - Time extensions past 60 days
 - Clarify when waiver applies
 - Clarify circumstances for denial, with or without prejudice

Proposed Changes

- Certification effective date
- Inspection and/or Enforcement
- Fees
- Administrative Hearing Commission instead of the Clean Water Commission





Questions? Thoughts? Experiences?



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