



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

# DEPARTMENT OF NATURAL RESOURCES

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**MAY 06 2014**

Mr. Norb Plassmeyer  
205 County Road 514  
Freeburg, MO 65035

RE: Petition Regarding General Conditions for Nationwide Permits

Dear Mr. Plassmeyer:

Thank you for your letter dated March 6, 2014, petitioning the Missouri Department of Natural Resources under section 536.041 RSMo to subject the “State of Missouri General Conditions for Nationwide Permits” (“NWP Conditions”) to the rulemaking process, as well as revise the document to include identification of its origin under section 640.026.2 RSMo.

The water quality certification process, described in section 401 of the Clean Water Act, gives each state the responsibility to verify federal actions do not impair the state’s water quality standards. The NWP Conditions are based on protecting those standards, including the narrative criteria in 10 CSR 20-7.031(4).

The U.S. Army Corps of Engineers issues hundreds of nationwide permits in Missouri each year, and periodically revises its nationwide permits. The Department developed the NWP Conditions in an effort to facilitate the use of nationwide permits and to meet expectations regarding the timing and nature of pre-certification from the state.

If the Department were required to conduct a rulemaking each time the Corps revised a Nationwide Permit, the Department would not be able to complete the rulemaking in a timely manner without disrupting the overall process for obtaining a nationwide permit.

Nevertheless, the Department agrees that revisions to the state’s water quality certification rule at 10 CSR 20-6.060 are warranted, and plans to initiate stakeholder discussions about such a rulemaking this summer. A discussion of this topic will be included in the June 26, 2014 Water Protection Forum, and there will be additional opportunities for public input as the rulemaking unfolds. The Department expects revisions to the certification process for Nationwide Permits will be part of the discussion.

Mr. Norb Plassmeyer  
Page Two

Regarding the criteria listed in section 536.175.4 RSMo, the Department finds that:

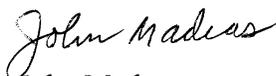
- (1) both the NWP Conditions and 10 CSR 20-6.060 continue to be necessary, taking into consideration the purpose, scope, and intent of section 401 of the Clean Water Act;
- (2) neither the NWP Conditions nor 10 CSR 20-6.060 are obsolete;
- (3) both the NWP Conditions and 10 CSR 20-6.060 serve purposes distinct from, and do not conflict with, other state, local, or federal rules;
- (4) the Department envisions future discussions with stakeholders regarding whether a less restrictive, more narrowly tailored, or alternative rule could adequately protect the public or accomplish the same statutory purpose;
- (5) the Department agrees that 10 CSR 20-6.060 should be revised, and may be revised in ways that reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork;
- (6) the Department plans to further review whether the rule should incorporate a text or other material by reference and, if so, plans to ensure that such incorporation by reference meets the requirements of section 536.031;
- (7) the specific public purpose of both the NWP Conditions and 10 CSR 20-6.060 is to perform the state's role under section 401 of the Clean Water Act; and
- (8) the comment process described in section 536.175.2 has not yet occurred.

The second item you brought to the Department's attention is being addressed. The Department will ask the various Corps Districts to incorporate a slight modification to the NWP Conditions document for future projects, in an attempt to clarify that the Department did not intend that document to constitute a rule of general applicability. An updated document will soon be posted to the Department's website once feedback is received from the Corps. This updated document will reflect the new requirements from section 644.026.2 RSMo, which became effective this past year.

The Department thanks you for your interest and hopes that you will actively participate in future discussions on this topic. Department staff will continue to protect the state's water resources from adverse impacts that may result from federal actions.

Sincerely,

WATER PROTECTION PROGRAM



John Madras  
Director

JM:sbj

c: Ms. Cindy Kadlec, Joint Committee of Administrative Rules  
Senator Eric Schmitt  
Representative Jay Barnes