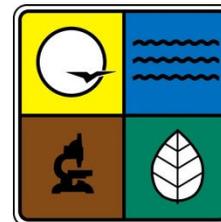


Clean Water Act Section 401 Certification Program

Stacia Bax, Environmental Specialist
Section 401 WQC Rulemaking Subcommittee
August 26, 2014



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Overview

- Authority.
- Reasoning.
- Staff.
- Process.
- Nationwide Permit Renewal.
- Inspection and Enforcement.
- Missouri Stream Mitigation Method.
- 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 644.051.15
 - 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 Permits,
 - Federal Energy Regulatory Commission license,
 - Federally Issued National Pollutant Discharge Elimination System Permits.
- Federal permit or license not valid without state's certification or waiver.

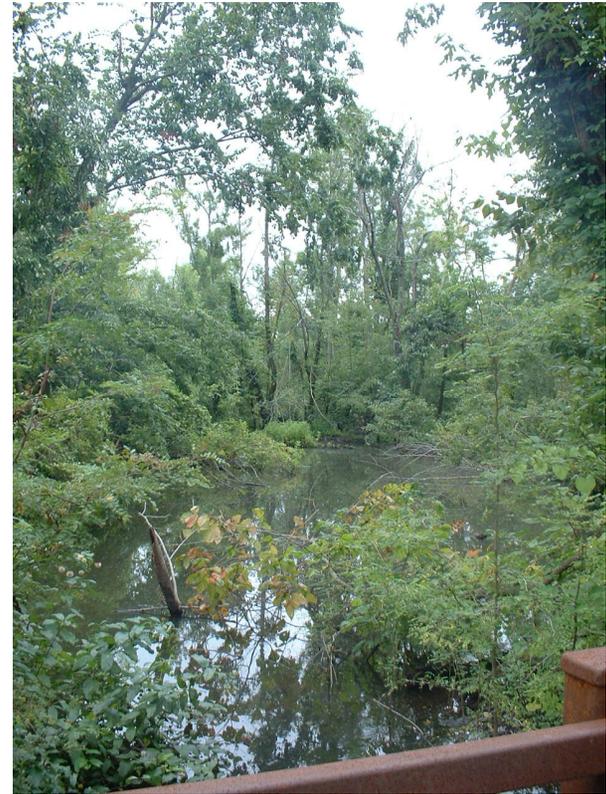
Staff

- §401 – Department of Natural Resources
 - Stacia Bax, technical and acting unit chief
 - Chris Miller, technical (~1/4 time)
 - Joshua Ernst, technical (as needed)
 - Patricia Conger, clerical



Staff

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



Missouri Department of Natural Resources

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Missouri State Regulatory Office
221 Bolivar St., Suite #103
Jefferson City, MO 65101
PHONE (573) 634-2248 x104
FAX (573) 634-7960

U.S. Army Corps of Engineers, Districts in the State of Missouri

Rock Island District
Clock Tower Building
P.O. Box 2004
Rock Island IL 61204-2004
PHONE (309) 794-5373
FAX (309) 794-5190 or (309) 794-5191

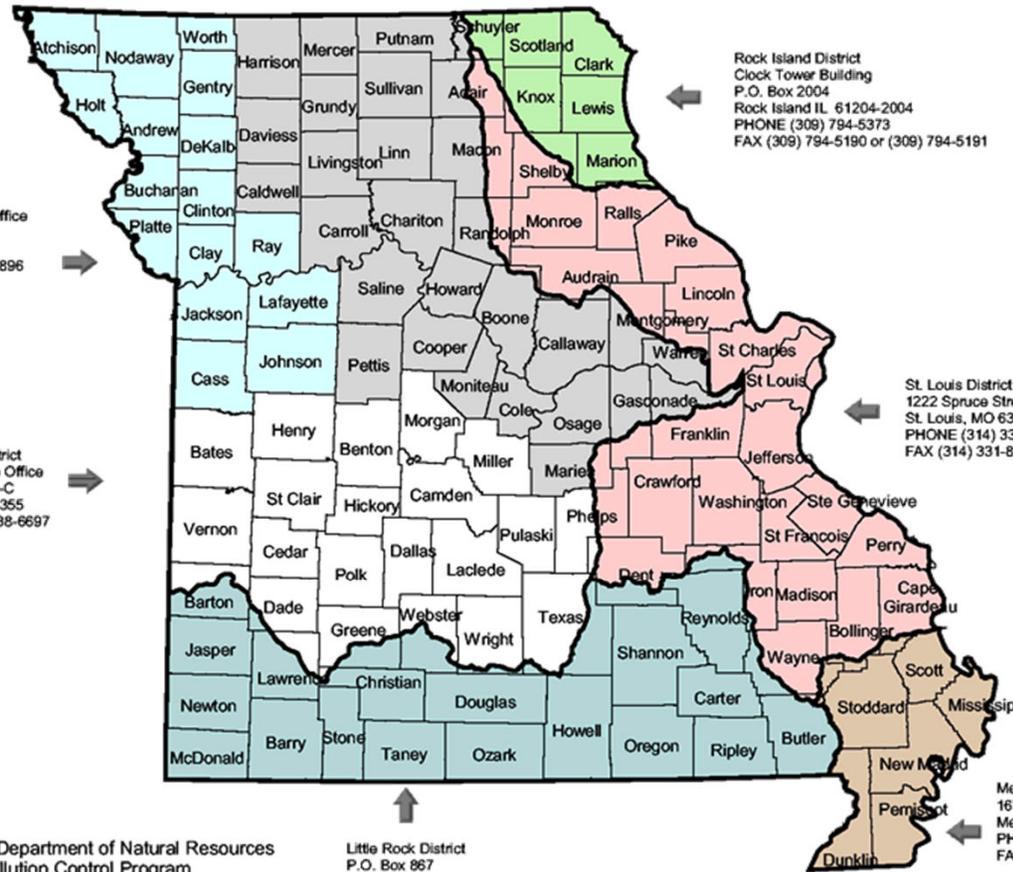
Kansas City District
Kansas City Regulatory Office
700 Federal Bldg.
601 E. 12th St.
Kansas City, MO 64106-2896
PHONE (816) 983-3990
FAX (816) 426-2321

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Little Rock, AR 72203-0867
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FAX (501) 324-6013



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

- Section 404 Permits & §401 Certifications

		USACE	DNR
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 Stream Mitigation Method

- USACE written, IRT input.
 - Introduced February 2007.
 - Updated May 2013.
 - Public Noticed.
- Helps to provide statewide consistency.
 - Definitions, authorities, guidelines, policies
 - Worksheets
 - Adverse Impact Factors
 - Mitigation Credit Factors – riparian & in-stream.



Missouri Wetland Mitigation Method

- Coming soon to a wetland near you...



§401 Process

- Certifications must be addressed within 60 days:
 - Certified,
 - Certified with conditions, or
 - 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

- E-mail with electronic document(s) sent to respective regional office.
- Once \$75 fee received, §401 Water Quality Certification valid.
- <http://www.dnr.mo.gov/env/wpp/401/index.html>



Nationwide Permit Renewal

- March 19, 2012 became effective.
 - Expires in 5 years.
 - Missouri's General and Specific Conditions were accepted by all USACE districts.
 - Reduced need for individual certifications.
 - All impaired waters (2007) versus only waters impaired by inorganic sediment, aquatic habitat alteration or unknown impairment (2012).
 - Pre-certified NWPs 29 and 39.

http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2012/NWP2012_corrections_21-sep-2012.pdf

Inspection and Enforcement

- Regional Office & Agency Resource 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 U.S. Army Corps of Engineers and Environmental Protection Agency handle most enforcement actions.

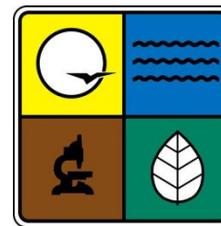
Questions?



10 CSR 20-6.060 Water Quality Certification Rule

Section 401 WQC Rulemaking Subcommittee

August 26, 2014



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Overview

- Authority
- Purpose
- Process/Timeline
- Thoughts on Changes
- Questions?



Authority

- §401 Water Quality Certification
 - Missouri Revised Statutes Section 644.051.14
 - 10 CSR 20-6.060
- Rulemaking
 - *Section 536.016, RSMo.*, staff is required to find that a proposed rule is necessary to carry out the purposes of *Section 644.026 RSMo.*, granting rule making authority.

Purpose

- Update rule to include:
 - Current practices and policies and
 - Make clear the certification process, documents required for a complete application, and general conditions.



Process/Timeline

- Clean Water Commission:
 - Updates at quarterly meetings or as necessary.
- Water Protection Forum:
 - Introduction was on June 26, 2014.
 - Update on September 11, 2014.
 - Updates and discussions at future meetings.

Process/Timeline

- Clean Water Forum Subcommittee Meetings:
 - Today is kick-off (August 26, 2014).
 - Next meeting on October 20, 2014.
 - Anticipating meeting every 2 months or as needed.
 - An estimated 6 meetings throughout entire process.

Process/Timeline

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



Thoughts on Changes

- Outline application process more clearly:
 - What is required, when is an application complete, who does what when, etc.
- Missouri's General and Specific Conditions:
 - Increase public participation process (public notices, meetings).
- Clarify what actions trigger need for WQC.
- Add no net lose statement.
- Reference Mitigation guidelines & policies.

Thoughts on Changes

- Outline requirements for Antidegradation and analysis of alternatives.
- Certification timeline:
 - Per statute, must be addressed within 60 days.
 - Time extensions past 60 days.
 - Clarify when waiver applies.
 - Expedited process if certain requirements met?
- Inspection and/or Enforcement.

Questions?



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