



## **401 Certification Program Summary** **~Missouri~**

### **Overview**

The Missouri Department of Natural Resources (Department) uses 401 Certification as their primary authority to comment on dredge and fill projects. The state relies on five Corps District offices for comprehensive review of permit applications, and then adds state comments as appropriate – examples may include appropriate consideration of state stream mitigation requirements, use of best management practices, or provisions for protection of listed species. Compliance and enforcement is generally the responsibility of the Corps. However, the Department may proceed with enforcement actions for violation of the Missouri water quality standards.

### **Definition of Waters of the State**

The definition of Waters of the State in Missouri is interpreted to include all wetlands:

"Waters of the State" refers to all rivers, streams, lakes, and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased, or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state (Section 644.016).<sup>i</sup>

### **Permits Requiring 401 Certification**

Missouri primarily certifies 404 permits. They also issue 401 Water Quality Certifications when required by a FERC license and when required for Coast Guard Bridge permits. Missouri recognizes the potential to certify Section 10 permits, although this is not done on a regular basis.

### **States 401 Certification Standards (Water Quality and Other)**

Missouri utilizes their general Water Quality Standards to create conditions for wetlands. The state has narrative criteria for streams and rivers and is developing narrative criteria for wetlands specifically, which they expect to incorporate into their regulations by 2015. All certifications state that the proposed project will not cause narrative or numeric damage or impair uses in the Water Quality Standards. Missouri's definitions for Classified Waters within their Water Quality Standards can be found in 10 CSR 20.7.031(1)(F) and at [http://www.dnr.mo.gov/env/wpp/wqstandards/wq\\_classfd\\_wb.htm](http://www.dnr.mo.gov/env/wpp/wqstandards/wq_classfd_wb.htm). Missouri's general Water Quality Standards can be found in 10 CSR 20-7.031(3) and at [http://www.dnr.mo.gov/env/wpp/wqstandards/wq\\_criteria.htm](http://www.dnr.mo.gov/env/wpp/wqstandards/wq_criteria.htm). Numeric Water Quality Standards in Missouri can be found in 10 CSR 20-7.031(4) and associated tables at <http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7.pdf>.

## **Description of Designated Uses and Existing Uses**

Designated uses in Missouri are not specific to wetlands. Missouri's list of designated uses can be found in 10 CSR 20-7.031(1)(C) at <http://www.sos.Missouri.gov/adrules/csr/current/10csr/10c20-7.pdf>

## **Antidegradation Applications**

Missouri plans to update its Antidegradation Policy by 2015. The current Antidegradation Policy can be found here: [http://www.dnr.Missouri.gov/env/wpp/wqstandards/wq\\_antideg\\_pol.htm](http://www.dnr.Missouri.gov/env/wpp/wqstandards/wq_antideg_pol.htm)

## **401 Certification Implementation**

Missouri does not waive certification. They certify, or certify with conditions, and deny on very rare occasions, only when the project as proposed will violate State Water Quality Standards. A chart of the annual number of 401 Certifications processed in Missouri can be found here: [http://aswm.org/pdf\\_lib/401\\_cert/mo\\_401\\_numbers\\_annual\\_certifications.pdf](http://aswm.org/pdf_lib/401_cert/mo_401_numbers_annual_certifications.pdf)

In regard to Nationwide permits, Missouri has denied some completely and has conditioned others. Seven (7) of the 2007 Nationwide permits require individual certification. Individual certification is also required if certain conditions of the pre-certification cannot be met. Missouri reviews as many pre-certified permitted proposed projects as possible to ensure the project's compliance with the certification. The Missouri General Water Quality Certification Conditions of Nationwide permits can be found here <http://www.dnr.missouri.gov/env/wpp/401/nwp-conditions.pdf>

It is Missouri's intention to issue an individual 401 Water Quality Certification to all individual 404 permitted projects. The certification will condition the project to ensure water quality standards are not violated. In addition to the project specific conditions, Missouri also has a checklist of general conditions that is included in all certifications. Examples of conditions included in this checklist are minimum vegetation requirements, fuel, oil and spill requirements, and protection of listed endangered species. Other common conditions in Missouri include BMPs, proper mitigation, and making sure minimal clearing is done. Common examples of a Nationwide permit that would activate an individual 401 certification would be a construction project where the impacts to a stream are more than minimal, projects where there may be deposition of construction erosion and sediment into a wetland or stream, projects involving the construction of culverts, low water crossing, and bank stabilization, and project that involve cutting off or channelizing a stream.

## **Coordination of Programs:**

### **Coordination with Corps Districts**

Missouri falls within 5 different Corps districts with the Kansas City District being the lead district for the state. Missouri often encounters variety in the way that issues are handled and

documents are written across the districts. Missouri and the Corps have an outdated sketch of what is called a Joint Processing Agreement; however, there has been movement among the Corps to reinstate the annual coordination meeting and drafting a completed Joint Processing Agreement.

Often requests for 401 Certification come in the form of public notice. Missouri then has the opportunity to review all comments and the applicant's responses to those comments before issuing a certification. The certification becomes a part of the Corps 404 permit and is forwarded to the permittee as a single enforceable document. For Nationwide permits, the state's conditions are either attached, or in some instances the Corps may send a provisional permit, stating in the cover letter to the applicant that the state's certification is part of the permit and that they are required to request certification.

### Coordination with other Agencies

In addition to the Corps, Missouri coordinates with the Missouri Department of Conservation, Fish and Wildlife Service, and EPA, as much time in each agency allows. Missouri particularly advises the applicant to consult with Fish and Wildlife or the Department of Conservation whenever aquatic passage is involved. They also emphasize coordination with these programs regarding endangered species. A condition that is included in all certifications is a reminder that acquisition of a 401 Certification shall not be construed to suggest that all other permits are superseded. This encourages applicants to investigate what other permits may be needed. Coordination among these agencies is necessary in developing Missouri Regional Conditions.

### Coordination with Other Authorities

There are other State authorities, in addition to the 401 Certification program, that protect wetlands in similar ways. These include Clean Water Act 402 permits such as NPDES, Land Disturbance permits that are activated when a project disturbs one acre or more and also the Land Reclamation Program that issues their own permit if the project involves a regulated sand and gravel operation.

### **Project Analysis/Integration of 404(b)(1) Guidelines**

Through the antidegradation implementation plan, Missouri requires alternative analysis. In general, the department works with applicants to avoid and minimize impacts to water.<sup>ii</sup>

### **Mitigation Requirements**

Missouri's general mitigation guidelines can be found here:

[http://www.dnr.Missouri.gov/env/wpp/401/mitigation\\_guidelines.pdf](http://www.dnr.Missouri.gov/env/wpp/401/mitigation_guidelines.pdf). "Missouri developed mitigation guidelines which regulators have implemented through CWA 401 certifications to increase the mitigation obtained from Corps permits. (p. 24)"<sup>iii</sup> Even before the 2008 Mitigation Rule, resource agencies collaborated on mitigation projects. Now the Interagency Review Team's role is better defined and made up of members from federal and state agencies such as U.S. Fish and Wildlife, the Corps, EPA, NRCS, and Missouri Department of Conservation, with

occasional others depending on expertise and project type. In 2007, through a USACE lead policy development team, federal and state partners developed the Missouri Stream Mitigation Method, which used the Charleston District's method as a template ([http://www.nwk.usace.army.mil/regulatory/CompMit/MO/MSMM\\_Feb2007.pdf](http://www.nwk.usace.army.mil/regulatory/CompMit/MO/MSMM_Feb2007.pdf)). Missouri is currently working on developing a similar method for wetland mitigation, also using the Charleston district method as a template. The State seeks copies of completed mitigation documents from the USACE and/or applicants, even if it is not a project that they certify individually, to be able to document completed projects.

### **Monitoring and Enforcement Approaches**

Once Missouri issues a certification, they do not currently have the capacity to monitor the projects results. Missouri has general enforcement capabilities through its Water Protection Program, but 401 Certification specifically is not enforced. The State operates under the assumption that they could enforce Water Quality Standards but not 401 Certification itself. Missouri relies on the Corps for enforcement as there is no organized group at the State level to enforce conditions of the 401 Certifications.

### **Staffing**

There is currently one person who does technical review of 401 Certifications in Missouri. This person commits 95% of their time to 401 Certifications and has one support staff person who commits 75% of their time to 401 Certification. Field visits to project site are very minimal. There is a special projects staff member who serves as the IRT for the department and also assists on a few projects when available. In times when there were more staff members, more time could be spent reviewing projects and in the field on training and/or project site visits.

### **Tracking Techniques/Databases**

Missouri does have a 401 Certification database that took about a year to develop with their IT staff. It is referred to as the Certification Management System (CMS) and is limited in its ability to track and search projects. Reporting ability and project mitigation tracking are aspects that would greatly enhance the system.

### **Program fees**

Missouri Clean Water Law, Chapter 644.052.9 RSMo, gives the Department the authority to collect a fee for the issuance of a certification. Missouri requires a fee of \$75.00 for specified certifications, further information can be found here: <http://www.dnr.Missouri.gov/env/wpp/401/checklist.pdf>. Anytime the certification is rewritten due to changes to the project, a new fee is charged. However, if the change does not require that the certification be rewritten then no fee is charged. For example, the Corps may extend the permit beyond its expiration date, the State's certification does not have an expiration date and so it simply expires with the 404 permit; therefore, when the 404 permit is extended so is the certification. If Missouri does not make any changes to the permit, they do not re-issue

certification and do not require a fee. They do charge a fee however if there is a transfer of ownership or if there is a modification to the project.

However, as of January 1, 2011, the Department's authority to collect water permit fees has expired, which means the Department no longer has statutory authority to collect the certification fee. The authority to collect permit fees for 401 certification and other Clean Water Act permits administered by Missouri was not renewed during the 2010 state legislative session nor has it been renewed as of today May 11, 2011, during the 2011 state legislative session.

### **Missouri Example Certifications:**

[http://aswm.org/pdf/lib/401\\_cert/mo\\_general\\_conditions\\_for\\_nationwide\\_permits.pdf](http://aswm.org/pdf/lib/401_cert/mo_general_conditions_for_nationwide_permits.pdf)  
[http://aswm.org/pdf/lib/401\\_cert/mo\\_dnr\\_example\\_city\\_of\\_st\\_peters\\_certification.pdf](http://aswm.org/pdf/lib/401_cert/mo_dnr_example_city_of_st_peters_certification.pdf)  
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[http://aswm.org/pdf/lib/401\\_cert/mo\\_dnr\\_example\\_storm\\_water\\_improvements\\_certification\\_4\\_20\\_10.pdf](http://aswm.org/pdf/lib/401_cert/mo_dnr_example_storm_water_improvements_certification_4_20_10.pdf)

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<sup>i</sup> (10 CSR 20-7.031(AA); <http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7.pdf>)

<sup>ii</sup> <http://www.dnr.Missouri.gov/env/wpp/401/index.html>

<sup>iii</sup> [http://www.epa.gov/wetlands/pdf/CWA\\_401\\_Handbook\\_2010\\_Interim.pdf](http://www.epa.gov/wetlands/pdf/CWA_401_Handbook_2010_Interim.pdf)