



Improving Regulatory Enforcement: ASWM Capacity Building Webinar Series

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Water Protection Program

September 29, 2020

Improving Regulatory Enforcement Overview



- Authorities
- Enforcement Activities
- Relationships
 - Formal Agreements
 - Informal Coordination
- Considerations
- Different Program Levels
- Missouri's Program
- Lessons Learned

Authority for Clean Water Act Section 401 Water Quality Certification¹

- Federal level
 - Section 401 of Public Law 92-500, the Clean Water Act of 1972 and subsequent revisions
 - Authority given directly to states and tribes
 - 40 C.F.R. § 121 (changes effective 09/11/2020)
- State level
 - Section 644.051, Missouri Revised Statutes
 - 10 C.S.R. § 20-6.060
- State program in addition to § 401?
- Case Law? Policies? Guidance?



¹ Newly effective federal § 401 rule may alter concepts.

Authority for Clean Water Act Federal Agencies

- U.S. Army Corps of Engineers (USACE) Section 404 Department of the Army Permits
 - Sections 404 & 309 of Public Law 92-500, the Clean Water Act of 1972 and subsequent revisions
 - 33 C.F.R. § 326
- U.S. Coast Guard (USCG) Permits
- Federal Energy Regulatory Commission (FERC) licenses
- Federally Issued National Pollutant Discharge Elimination System (NPDES) Permits

Enforcement Activities

- Single or multiple media
- Single or multiple agencies
 - Example – dam construction
 - Placement of fill: federal agency, state/tribe?
 - Fish kill: fish and game agencies?
 - Endangered/Threatened species: fish and game agencies?
 - Lack of water downstream: water rights agency?
 - Contaminated soils: hazardous waste?
 - Water pollutant discharge: § 402 NDPES? state/tribe?



Relationships: Formal Agreements*

- Memorandum of Understanding or Agreement
 - Usually requires review of legal counsel
- Joint Processing Agreement
 - Outlines process and timeline
 - Specific parts for application requirements, review (app and reports), inspections/site visits, enforcement
 - Who does what, when
- Joint Application/Joint Public Notice
 - Single application process for applicant's ease of use
 - More efficient/standardized process, less time for review
 - If marketed and easier to use, maybe more submit application (i.e., less operating without authorization)?

*These agreements may no longer be an option under § 401

Relationships: Informal Coordination

- Building relationships through communication
 - Pick up the phone
 - Bounce ideas, concerns off one another
- Routine multiagency meetings
 - Types
 - Policy Development Teams
 - Informal groups
 - Frequency
 - Annual (broad in audience and topic)
 - Quarterly
 - Monthly (smaller group, specific issues)

Relationships: Informal Coordination

- Educational events
 - Group trainings (e.g., macroinvertebrate, delineation)
- Multiagency site visits/inspections
 - Use each agency's experts to inform situation
 - Early Assistance*
 - Compliance



*Under new § 401 rule, states/tribes only have authority to inspect prior to project initiation

Considerations

- State laws and regulations
- Agreements (formal or informal)
- Staffing level
 - Small team (1-3 FTE) for entire state
 - Multiple staff or separate enforcement unit
- § 404 Assumption
- State/Tribe-only programs



Different Program Levels

- State takes the lead*
- Equal roles between federal agency and state/tribe *
- Outlined division of duties between federal agency and state/tribe (40/60 split or other variations)*
- Federal agency takes lead

*May no longer occur given the new rule, depending on S/T rules/program and relationship with federal agencies

Missouri's Program

US Army Corps of Engineers Regulatory Offices in the State of Missouri

- 7 USACE Districts
- 5 with regulatory offices
- 3 Divisions
- Lead District Initiative
- ~1.5 FTE

Kansas City District
Missouri State Regulatory Office
515 East High Street #202
Jefferson City, MO 65101
Tel.: 573-634-2248
Fax: 573-634-7960

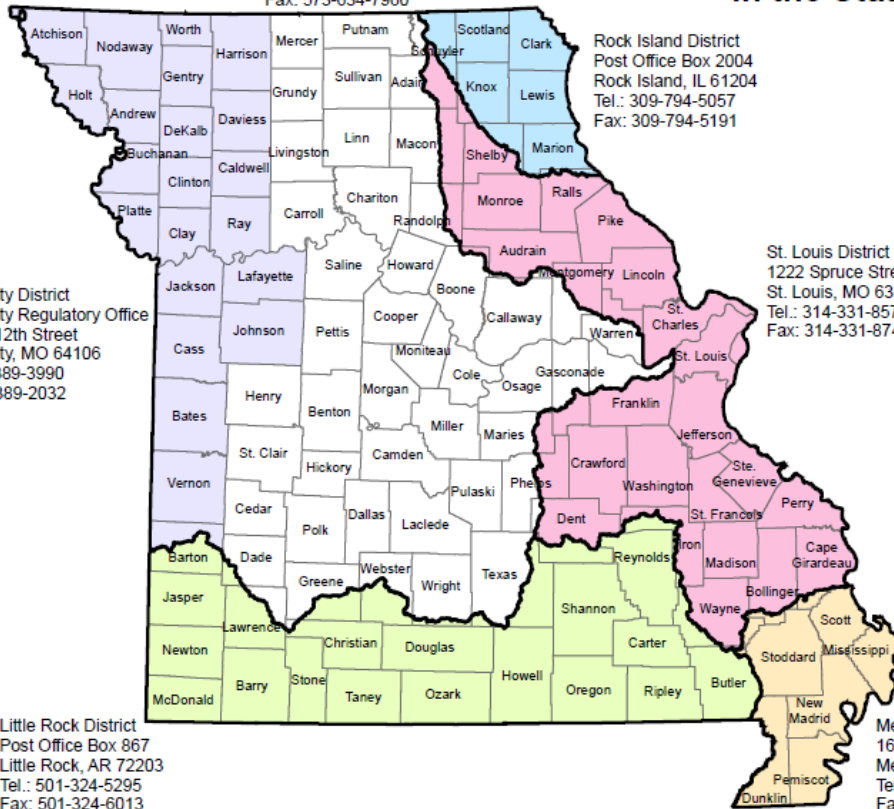
Rock Island District
Post Office Box 2004
Rock Island, IL 61204
Tel.: 309-794-5057
Fax: 309-794-5191

St. Louis District
1222 Spruce Street
St. Louis, MO 63103
Tel.: 314-331-8575
Fax: 314-331-8741

Kansas City District
Kansas City Regulatory Office
601 East 12th Street
Kansas City, MO 64106
Tel.: 816-389-3990
Fax: 816-389-2032

Little Rock District
Post Office Box 867
Little Rock, AR 72203
Tel.: 501-324-5295
Fax: 501-324-6013

Memphis District
167 North Main, B202
Memphis, TN 38103
Tel.: 901-544-3471
Fax: 901-544-0211



Missouri's Program*

- Federal agency takes lead
- Very rarely an enforcement action solely on §401
 - Inspect when water quality standard violations actively occurring
 - Mainly based on narrative criteria
- Formal agreement for joint public notice (old)
- No formal mechanism for enforcement
- Joint processing agreement in works for years
- Quarterly multiagency meeting reinstated recently
- Often joint site visit for known issues/concerns

*This list applies prior to federal rule effective date

Missouri's Program

- Rule revision in process for 10 C.S.R. § 20-6.060
- Others are our eyes & ears in field (mostly)
 - Photos, description of activities, location, concerned citizen or landowner contact information
 - Activities of concern
 - Fill material damming up a stream
 - Random items used for bank stabilization (tires, vehicles)
 - Construction BMPs in a water body unless temporary (less than 6 months)
 - Heavy equipment in channel, moving material around
 - Concerns forwarded to federal agency
- Future = GIS based information

Missouri's Program



Lessons Learned

- Rule changes can shake things up greatly
- Outline process, responsibilities preferably in writing
 - Helps with staff turnover and changes in rule/policy (have a place to start from)
 - Review routinely and update as needed
- Keep pushing for communication, meetings, documents (whatever is lacking)
- Have a Plan B
- Be positive, helpful, understanding
- Know folks in different areas, agencies

Lessons Learned

- Coordinated assistance may reduce applicant/violator frustrations
 - Reduces conflicting recommendations from different agencies (or at least provides a platform to explain differences)
 - Can reduce duplicative efforts
 - Increased education of all (more consistent response in future)

Questions? Thoughts? Experiences?



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