

Implications of Session Law 2009-406 (Senate Bill 831) for 401 Certifications, Non-404/Isolated Wetlands Permitting, and Buffer Rules

Jan. 1, 2003 - - - Dec. 31, 2007	Three-year Tolling Period Jan. 1, 2008 to December 31, 2010	January 1, 2011 ---December 31, 2015 and beyond
Example A, DWQ Isolated Wetlands Permit only, no Corps 404 Permit. 401 issued February 1, 2003 (would expire in five years on Feb. 1, 2008 but for SB 831)	Clock stops with one month remaining on written Isolated Wetlands permit.	Clock re-starts, permit expires Feb. 1, 2011 (three years added to original expiration of Feb. 1, 2008).
Example B, DWQ 401 Water Quality Certification needed for Corps 404 Permit, Section 10 Permit, or other Federal Permit. 401 Issued July 1, 2004 (Corps then issues 404 Permit which expires July 10, 2009)	Clock keeps ticking on 401 due to Federal Permit, so 401 expires July 10, 2009 with 404 Permit.	Tolling period does not affect 401, which expired July 10, 2009.
Example C, Buffer Variance or Buffer Authorization only, no Federal Permit involved. Issued Nov. 30, 2007, would expire in five years on Nov. 30, 2012 but for SB 831.	Clock stops with 4 years, 11 months remaining on written approval.	Clock re-starts, then expires Nov. 30, 2015 (three years added to original expiration of Nov. 30, 2012).
Example D, combined 401 Certification and Buffer Authorization Issued March 1, 2007. Corps says 404 Permit expires March 10, 2012, then grants a one-year extension to March 10, 2013. Buffer Authorization shelf life coincides with 401 Certification, but for SB 831.	Clock stops for Buffer Approval, keeps ticking on 401 Certification.	401 Certification expires Mar.10, 2013* along with 404 Permit. Clock re-starts on Buffer Approval, which is effective until Mar. 10, 2016.
Example E, 401 Certification linked to both 404 Permit and CAMA Permit. 401 Issued Dec. 1, 2007. Corps says 404 Permit issued Dec. 30, 2007 expires on Dec. 30, 2012. CAMA Permit issued January 1, 2008 gets 3-year tolling period plus stated CAMA Permit shelf life, but impacts requiring 401 Certification would need to be completed within timeframe of active 401 Certification.	Clock keeps ticking on 401 Certification.	401 expires December 30, 2012 with 404 Permit.

* In this case, if the 404/401 expires and the applicant still wants to pursue the project, he will need to re-apply to the Corps for the 404 Permit, and to DWQ for the 401 Certification. Since the old Buffer approval is still valid, it should be referenced in the re-application. Applicants are encouraged to apply for an extension prior to the 404 expiration date to simplify matters.