



**PUBLIC NOTICE**  
**Montana Department of Environmental Quality**  
**Water Quality Certification In Accordance With Section 401 of the Clean Water Act For**  
**The 2020 Nationwide Permits in Montana**

**November 25, 2020**

APPLICANT NAME: U.S. Army Corps of Engineers, Montana Regulatory Office

WATERWAY: Waters in the State of Montana

Interested parties are hereby notified that the Montana Department of Environmental Quality (DEQ) has received an application to perform work in waters of the United States as described below. DEQ has reviewed the work pursuant to Section 401 of the Clean Water Act (CWA), with applicable provisions of the State water quality standards and has made a tentative determination to issue 401 Certification with Conditions.

Parts A-E constitutes the Montana Department of Environmental Quality's tentative Section 401 Water Quality Certification position on the subject Nationwide Permits.

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40 CFR § 121.7(d)(2)(i) Montana Department of Environmental Quality does not have project specific information that is required in the 'JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES'. Without this information, DEQ cannot identify specific waterways impacted by the project including wetlands and tributary streams or confirm the status of waterways impacted by the project.

**A. Certification with General Conditions**

DEQ is granting Section 401 Water Quality Certification (certification) with the General Conditions listed in Section E for Nationwide Permits 1-11, 14-20, 22-28, 30-36, 38, 41, 46-49.<sup>1</sup>

**B. Special Conditions for Specific Nationwide Permits**

1) DEQ is granting certification of Nationwide Permit #12 [Oil or Natural Gas Pipeline Activities], Nationwide Permit C (#pending) [Electric Utility Line and Telecommunications Activities], and Nationwide Permit D (#pending) [Utility Line Activities for Water and Other Substances] for projects that do not a) disturb the bed and banks of waterbodies or b) cause a violation of short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities

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<sup>1</sup> MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

because a static or vibratory plow is used and/or Horizontal Directional Drilling technology is implemented. DEQ denies certification for all other projects that qualify under this Nationwide Permit.<sup>3</sup>

2) DEQ is granting certification of Nationwide Permit #13 [Bank Stabilization], Nationwide Permit #21 [Surface Coal Mining Activities], Nationwide Permit #29 [Residential Developments], Nationwide Permit #37 [Emergency Watershed Protection and Rehabilitation], Nationwide Permit #39 [Commercial and Institutional Developments], Nationwide Permit #40 [Agricultural Activities], Nationwide Permit #42 [Recreational Facilities], Nationwide Permit #43 [Stormwater Management Facilities], Nationwide Permit #44 [Mining Activities], Nationwide Permit #45 [Repair of Uplands Damaged by Discrete Events], and Nationwide Permit #50 [Underground Coal Mining Activities] for all projects equal to or less than 300 linear feet.<sup>3</sup>

### C. Waiver

Nationwide Permit #54 [Living Shorelines], Nationwide Permit A (#pending) [Seaweed Mariculture Activities], Nationwide Permit B (#pending) [Finfish Mariculture Activities] are waived as these Nationwide Permits only apply to coastal shorelines and the Great Lakes.

### D. Denial

Nationwide Permit #51 [Land Based Renewable Energy Generation Facilities], Nationwide Permit #52 [Water Based Energy Renewable Energy Generation Facilities], Nationwide #53 [Removal of Low Head Dams], Nationwide Permit E (#pending) [Water Reclamation and Reuse Facilities] are denied for the five year cycle.<sup>3</sup>

### E. General Conditions for Nationwide Permits

The following general conditions apply to all certified Nationwide Permits as provided in A and B above:

1) DEQ Water Protection Bureau – Discharge Permitting Program must be notified by the permittee for activities requiring USACE pre-construction notification (PCN). **For all projects where a Federal Agency is an applicant, that agency must provide notification and submit a Joint Application to DEQ, regardless of USACE pre-construction notification requirements.** Notification shall be at least 30 days prior to the commencement of the activity and include (a) the permittee name, (b) the project name, (c) the Nationwide Permit used for the project, (d) the Township, Range and Section, (e) the project or regulated activity location in decimal latitude and longitude to the millionth degree (six significant figures to the right of the decimal point) (f) the volume of the discharge, (g) the biological, chemical, physical, and radiological characteristics of the discharge, (h) a description of the existing environment at the site of the discharge, (i) the size of the area affected, (j) the location or locations at which the discharge may enter state waters. Notification of must be submitted by mail to DEQ or electronically through DEQ's Fees, Applications, and Compliance Tracking System (FACTS) website at: <http://deq.mt.gov/Public/FACTS><sup>2,3</sup>

2) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment facilities in wetlands.<sup>3</sup>

3) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.<sup>3</sup>

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<sup>2</sup> During FACTS development phase, notifications shall be sent to: [DEQWPBPublicComments@mt.gov](mailto:DEQWPBPublicComments@mt.gov)

<sup>3</sup> MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

4) This certification requires that materials used in stream bank or shore stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 guidelines for materials for stream bank stabilization. Tires may not be used to stabilize any banks in state waters.<sup>4</sup>

5) This certification requires that all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. Equipment cannot continue operating in or near the water if a leak is discovered. All such leaks will be properly repaired prior to equipment being allowed on the project site. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or be removed from the project area. If equipment is to be operated in or near water, a spill containment kit shall be available at the project site and DEQ shall be notified of spills.<sup>4</sup>

6) This certification requires that all permittees shall, to the maximum extent practicable, incorporate and construct design features that eliminate bridge deck run-off containing sediment, salt, or other pollutants from discharging directly into state water. To the extent practicable, bridge deck run-off, should be directed to a detention basin of unspecified size prior to continuing into state waters.<sup>4</sup>

7) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap bedding material. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and dormant plant material and/or root-stock.<sup>4</sup>

8) The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over a river is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/2-acre.<sup>4</sup>

9) Restored riparian areas shall be stable and should consist of native species.<sup>4</sup>

#### **F. Reopener Clause**

DEQ reserves the right to add or alter terms and conditions as appropriate to carry out its responsibilities with respect to water quality throughout the five year Nationwide Permit Cycle.

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<sup>4</sup> MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.