

Regulatory Approval Information for Hard Rock Mining in Montana Operating Permits, Exploration Licenses, and Small Miner Exclusions

Permits and approvals are required by state, federal, and local agencies to assure consideration of other resources, provide for reclamation, and protect water quality for downstream users. This list may not be all inclusive; please contact the Mining Bureau with any additional questions you may have.

I. Montana Department of Environmental Quality (DEQ)

DEQ reviews small miner exclusion statement applications for acceptability under the Metal Mine Reclamation Act (MMRA). DEQ also issues three types of approvals that typically apply to hard rock mining operations, (1) hard rock mining approvals (operating permits, rock products operating permits, or exploration licenses), 2) water quality permits, and 3) air quality permits:

A. Review of Small Miner Exclusion Statements (SMES) for acceptability under MMRA

- 1) **SMES:** An exclusion from permitting for <5 acres of total surface disturbance at any given time per site; use of mechanized equipment/blasting, and >100 sq. ft. of disturbance or 50 yd³ at any one site
 - a) No more than 2 sites at any given time
 - b) Each site must be at least 1 mile apart at their nearest points
 - c) DEQ can only bond “placer” mining operations under a SMES
 - i. A placer deposit means a deposit containing naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock
 - d) Types of operations may be placer, open pit, quarry, rock picking, underground, etc.

B. Approvals to operate hard rock mines issued by DEQ’s Mining Bureau

Contact: (406) 444-4953 or <https://deq.mt.gov/mining/Programs/hardrock>

- 1) **Exploration License:** surface activity to assess the mineral viability of a site
 - a) Usually drill holes and/or trenches
 - b) No more than 10,000 short tons of ore may be taken for testing
 - c) License is statewide and can be for multiple sites as long as each site has a Plan of Operations, a clear location map, and a bond in place for reclamation
- 2) **Operating Permit:** other hard rock mining, not addressed by exploration or SMES
 - a) >5 acres of total surface disturbance at any given time
 - b) Types of operations may be placer, open pit, quarry, underground, etc.
- 3) **Rock Products Operating Permit**
 - a) >5 acres of total surface disturbance at any given time
 - b) Decorative rock, building stone, riprap, mineral aggregates, or other minerals produced by typical quarrying activities or collected from or just below the ground surface that do not contain sulfides with the potential to produce acid, toxic, or otherwise pollutive solutions
 - i. Does not include talc, gypsum, limestone, metalliferous ores, gemstones, or materials extracted by underground mining

- c) Single site or multiple sites, may not cumulatively disturb more than 100 acres
- d) Sites cannot:
 - i. operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;
 - ii. have any water impounding structures other than for storm water control;
 - iii. adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or
 - iv. impact significant historic or archaeological features

C. Permits that protect water quality are issued by the Water Protection Bureau (WPB)

Contact: (406) 444-3080 or <https://deq.mt.gov/water/assistance>

1) Montana Pollutant Discharge Elimination System (MPDES) Surface Water Permits

- a) There are two types of Surface Discharge permits: Individual and General. A General Permit covers facilities with similar operations and types of discharge, and whose discharges have minimal environmental impact. DEQ develops the limits and requirements for an Individual Permit based on a facility's operations, type and amount of discharge, and the nature of the receiving stream, among other factors. Applies to all point-source water discharges to surface water, or discharges to groundwater with "direct connection" to surface water
- b) Mining activity and road construction that disturbs significant acreage (i.e. >5 acres)
- c) Suction dredge mining operations with intakes >4" in diameter (may be MMRA exempt) must apply for an Individual Surface Discharge Permit. Operations with intakes <4" in diameter may be eligible for the Suction Dredge General Permit.

2) MPDES Storm Water General Permits (MPDES)

- a) **Storm Water Construction Permits (SWC)** are required for construction activities that disturb more than one acre of land.
 - i. Mines may be required to carry SWC permits for temporary construction projects.
- b) **Storm Water Industrial Permits (MSGP)** are required for a wide range of industrial facilities based upon the standard industrial classification code of the facility
 - i. Required if any surface disturbance has the potential to contribute sediment or pollutants (i.e. fuel) to State waters during a storm event
 - ii. There is no minimum acreage – it applies to all surface disturbance

3) Montana Groundwater Pollution Control System (MGWPCS)

- a) Applies to all water discharges to groundwater (e.g. land application disposal (LAD), percolation ponds) or possible discharges (seepage from tailings disposal, ponds, or leach pads)
- b) Not required for a site that has obtained a Hard Rock Mining Operating Permit (OP) or Exploration License, but required for SMES with groundwater discharge

4) **318 Authorization**

- a) This permit is required for any person, agency, or entity, either public or private, initiating a short-term activity that may cause unavoidable short-term violations of state surface water quality standards. The major application of this law is related to sediments and turbidity caused by construction or other activities.

D. Approvals that protect air quality are issued by the Air Quality Bureau (aqb)

Contact: (406) 444-3490 or <https://deq.mt.gov/air/assistance>

1) Permitted Source Applicability

a) **Montana Air Quality Permit (MAQP) Applicability**

- i. Any source, excluding asphalt concrete plants, mineral crushers, mineral screens, and associated equipment (i.e., power generators, engines, etc.) with the potential to emit more than 25 tons/year (tpy) of any regulated criteria air pollutant (SO₂, NO_x, VOC, PM, PM₁₀, PM_{2.5}, CO, O₃), excluding lead (Pb);
- ii. Any source with the potential to emit more than 5 tpy of Pb or a modification to an existing source that results in an increase in the potential to emit Pb by an amount greater than 0.6 tons per year;
- iii. Asphalt concrete plants, mineral crushers, mineral screens, and associated equipment (i.e., power generators, engines, etc.) that have the potential to emit more than 15 tons per year of any regulated criteria air pollutant, other than Pb; or
- iv. Any incinerator, regardless of potential to emit a regulated criteria air pollutant(s)

b) **Title V Operating Permit (TV)**

- i. A source that has the potential to emit:
 - i. >100 tpy of any regulated criteria air pollutant;
 - ii. >10 tpy of any individual hazardous air pollutant (HAP);
 - iii. >25 tpy of combined, total HAPs; or
- ii. When required by other applicable regulations

2) Registered Source Applicability

- a) Asphalt concrete plants, mineral crushers, mineral screens, and associated equipment (i.e., power generators/ engines) may register pursuant to the requirements of ARM 17.8.1801, et. seq, in lieu of obtaining a MAQP.
- b) Oil or gas well facilities, as defined by § 75-2-103(14)(a), Montana Code Annotated (MCA), may register pursuant to the requirements of ARM 17.8.1701, et. seq, in lieu of obtaining a MAQP.
- c) Asphalt concrete plants, mineral crushers, mineral screens, and associated equipment (i.e., power generators/ engines), and/or an oil or gas well facility subject to the requirements of ARM Title 17, chapter 8, subchapter 12 (Title V Operating Permit Program), are not eligible to register and must instead obtain a MAQP and Title V operating permit in lieu of registration.

II. **Approvals required for work in Montana's Waterways (Multiple Agencies)**

DNRC: <https://dnrc.mt.gov/Licenses-and-Permits/Stream-Permitting/>.

For more information on Stream Permitting see the Stream Permitting Binder Book at <https://dnrc.mt.gov/docs/permits-services/StreamPermittingBinderBook2020.pdf>

- A. If you are planning to do work on or near a waterway in Montana, one or several permits may be required. Waterways include Montana's Streams, Wetlands, Floodplains, and other waterbodies.
- B. Joint permitting may be done through the Army Corp of Engineers, Montana DNRC, and Local Conservation Districts for proposed projects in waterways, which can be found at the above link. This form may be used for the following permits:
 - 1) 310 Permits, (Local Government – Conservation District)
 - a) This permit is required by any private, nongovernmental person or entity that proposes to work in or near a stream on public or private land. The permit is necessary for any activity that physically alters or modifies the bed or banks of a perennially flowing stream. A bond may be required.
 - 2) SP 124 Permits (State Government - MT Fish, Wildlife and Parks)
 - a) This permit is required by any state, county, or municipal agency, and the U.S. Bureau of Land Management and U.S. Forest Service, that proposes a project requiring alteration of the bed or banks of any stream, perennial or otherwise
 - 3) Floodplain Permits (Local Government - County Floodplain Administrators)
 - a) This permit is required for anyone planning new construction within a designated 100-year floodplain. Check with your local planning office to determine whether a 100-year floodplain has been designated for the stream of interest. Projects that have the potential to alter the mapped 100-year flood elevation may require extensive hydraulic analysis and permit review.
 - 4) Section 404/Section 10 Permits (Federal Government - US Army Corps of Engineers)
 - a) Section 404 Permits are required by any person, agency, or entity, either public or private, proposing a project that will result in the discharge or placement of dredged or fill material into waters of the United States. Waters of the United States includes lakes, rivers, streams (including intermittent), wetlands, and other aquatic sites. Stream and wetland work may require mitigation of impacts, including the Montana Stream Mitigation Procedure (MSMP).
 - b) Section 10 Permits are required for construction of any structure in, under, or over a federally listed navigable water of the United States, the excavation or deposition of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. Navigable waters in Montana are the Missouri River downstream of Three Forks, the Yellowstone River downstream of Emigrant, and the Kootenai River from the Canadian border downstream to Jennings, Montana.
- III. 318 (turbidity) Authorizations (State Government – DEQ) (see Section C for details) Federal Level:
 - A. U.S. Forest Service (USFS) for operations located on USFS land
Contact: (406) 629-3511 or <https://www.fs.usda.gov/>
 - 1) Notice of Intent is required for operations that do not use mechanized equipment
 - 2) Plan of Operations is required for any operations using mechanized equipment
 - 3) Bonding is determined by proposed surface disturbance and government reclamation costs
 - B. Bureau of Land Management (BLM) for operations located on BLM land

Contact: (406) 896-5000 or www.blm.gov/mt/st/en.html

- 1) Causal Use that causes negligible disturbance, no notification required
- 2) Notice is required for all operations disturbing less than 5 acres per year
- 3) Plan of Operations is required for disturbances larger than 5 acres

C. U.S. Army Corp of Engineers

Contact: (406) 441-1375 or

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Montana/>

- 1) Requires a 404 Permit before placement of dredge or fill-material in waters of the United States, including wetlands
- 2) Sections of river, including parts of the Missouri, Yellowstone, and Kootenai Rivers, may require a Section 10 permit for dredging

IV. Other:

A. Conservation Districts

Contact: (406) 443-5711 or dnrc.mt.gov/docs/conservation/CDBureau/cd-resource-documents/2022CDDirectoryforweb.pdf Require 310 Permit if activity alters, modifies, or affects the bed and banks of a perennial stream. A bond may be required.

B. Department of Natural Resources and Conservation (DNRC)

Contact DNRC (406) 444-6610 or <http://dnrc.mt.gov/divisions/water/water-rights>

- 1) Water Rights Bureau may require an application for water rights if you use water in your operation.
- 2) Minerals Management Bureau may require a mineral lease and royalty payments for mining activities on state trust land.

C. Montana Sage Grouse Habitat Conservation Program (MTSGHCP)

Contact MTSGHCP (406) 444-6340 or <https://sagegrouse.mt.gov/>

- 1) Operations within Sage Grouse Habitat will require consultation with the Montana Sage Grouse Habitat Conservation Program.

D. Department of Fish, Wildlife and Parks (FWP)

Contact FWP (406) 444-2535 or <https://fwp.mt.gov/>

Contact Aquatic Invasive Species Program (AIS) (406) 444-2440 or <https://CleanDrainDryMT.com>

- 1) Suction dredge permits require contact with FWP to ensure fisheries protection during the application process.
- 2) Any water-based equipment used in state waters will require an AIS inspection if it is being transported into the state or is transported west over the Continental Divide.