



December 15, 2025

Sage L. Joyce
U.S. Army Corps of Engineers, Omaha District
Montana Regulatory Office
100 Neill Avenue
Helena, Montana 59601-3329

Subject: Clean Water Act, Section 401 Certification Final Determination of the U.S. Army Corps of Engineers Proposed 2026 Nationwide Permits within the State of Montana

Dear Sage Joyce:

The Montana Department of Environmental Quality (DEQ) completed its review of the U.S. Army Corps of Engineers (USACE) Clean Water Act Section 404 proposed 2026 Nationwide Permits (NWP) and the proposed regional conditions. The attachment to this letter (Parts A through D) constitutes DEQ's position on the subject Nationwide Permits. It should not result in an undue burden to either of our agencies, while still providing adequate water quality protection. Also, please find enclosed the Montana Department of Environmental Quality's December 5, 2000, 'Guidelines for Materials for Streambank Stabilization' as referenced in the attached certification.

Please instruct your regulatory staff to CC verification letters to DEQ's Section 401 certification coordinator when corresponding with permittees. If a project fails to meet the enclosed conditions direct the applicant to contact DEQ's Section 401 certification coordinator to request a pre-filing meeting, to apply for an individual Section 401 certification determination, and to inquire about Section 401 certification related questions.

We look forward to continuing the close cooperation and coordination between our two agencies. Please contact me at (406) 444-5546 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tatiana Davila", is written over a light blue grid background.

Tatiana Davila, Bureau Chief
Water Protection Bureau

CC: Estella Moore, USEPA Region 8, w/ Attachments, via email at: moore.estella@epa.gov

Enclosure

Montana Department of Environmental Quality Clean Water Act Section 401 Certification Final Determination of the 2026 Nationwide Permits

This Clean Water Act Section 401 certification determination applies to any potential projects or activities authorized under the reissuance of the U.S. Army Corps of Engineers (USACE) proposed 2026 Nationwide Permits (NWP) into waters of the U.S. occurring where DEQ is the certifying authority in the State of Montana.

A. NWP Permit Certification Granted with Conditions¹

Clean Water Act Section 401 certification for the following proposed NWPs is granted with the General Conditions listed in Section D.

NWPs: 1, 2, 4-11, 14-20, 22-25, 28, 30-36, 38, 41, 46, 48, 49, 54, 55, 58

B. NWP Permit Certification Granted with Specific Conditions¹

NWP 3. Certified subject to the General Conditions listed in Section D. An Individual DEQ Section 401 review is required for projects or activities authorized under this NWP if:

- New work being proposed below the ordinary high water mark (OHWM) is greater than 10% of the existing footprint below OHWM.
- Cubic yardage of the new material placed exceeds an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the OHWM.

NWP 12. DEQ is granting Section 401 certification for projects or activities where a static or vibratory plow is used and/or where Horizontal Directional Drilling technology is implemented. DEQ denies Section 401 certification for all other projects or activities that qualify under this NWP.

NWPs 13, 21, 29, 37, 39, 40, 42, 43, 44, 45, 50. Certified subject to the General Conditions listed in Section D. An Individual DEQ Section 401 review is required for projects or activities authorized under these NWPs if:

- The project or activity results in total (cumulative) temporary and permanent impacts to streambanks or shorelines of greater than 500 feet for bank stabilization projects when natural or bioengineering techniques (e.g. sloping, vegetation, soil lifts) are utilized.
- The project or activity results in total (cumulative) temporary and permanent impacts to streambanks or shorelines of greater than 300 feet for bank stabilization projects when hard armoring techniques (e.g. rip-rap, gabion baskets, deflection walls) are utilized.
- The project or activity results in total (cumulative) loss of greater than 300 linear feet of stream bed or along the bank of streams, rivers, ditches, lakes, reservoirs by filling, channelization, piping, flooding, excavation, or drainage.
- The project or activity results in total (cumulative) permanent impacts greater than 1/4 acre to wetlands.

NWP 27. DEQ is granting Section 401 certification for the following projects or activities; all other projects or activities that qualify under this NWP require individual DEQ Section 401 review:

- DEQ is granting Section 401 certification for activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM or their designated state cooperating agencies.
- DEQ is granting Section 401 certification for voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

¹ MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

- DEQ is granting Section 401 certification for the reclamation of surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement or the applicable state agency.
- DEQ is granting Section 401 certification for watershed implementation project activities conducted under a Clean Water Act Section 319 grant.
- DEQ is granting Section 401 certification for the construction of fish habitat improvement structures and fish attraction devices within lakes, ponds, and reservoirs; the discharge within the waterway involved shall not exceed 50 cubic yards.
- DEQ is granting Section 401 certification for projects or activities that will cause a physical alteration of equal to or less than a total (cumulative) of 500 linear feet in length of a stream or river when measured along the bank or 1/4 acre of wetlands.

C. NWPs Denied²

NWPs 51, 52, 53, 57, 59, Proposed NWP A. 'Activities to Improve Passage of Fish and Other Aquatic Organisms' are denied for the five-year cycle.

D. State General Conditions for all NWPs²

The following state general Section 401 certification conditions apply to all NWPs whether granted with conditions or granted with specific conditions in Montana where DEQ is the certifying authority.

- 1) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment facilities in wetlands.
- 2) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.
- 3) 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 Streambank Stabilization'. Tires may not be used to stabilize any banks in state waters.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) Restored riparian areas shall be stable and should consist of native species.

² MCA 75-5 et seq.; MCA 75-7 et seq.; MCA 87-5 et. seq.; ARM 17.30 et. seq.

Policy on Streambank Stabilization

This policy outlines the guidelines for approved materials to be used for streambank stabilization in Montana. This policy and a draft Environment Assessment were provided to the public for comment via public notice MT-00-10 issued September 18, 2000. Comments were accepted until October 17, 2000. The draft Environmental Assessment is adopted as the final Environmental Assessment with the Responses to Comments incorporated.

Signed into policy 12/05/00 by Bonnie Lovelace, Chief, Water Protection Bureau and 12/06/00 by Jan Sensibaugh, Administrator, Permitting & Compliance Division.

GUIDELINES FOR MATERIALS FOR STREAMBANK STABILIZATION

The following guidelines represent the efforts of a work group composed of Conservation District representatives, natural resource consultants, environmental interests, and state and federal regulatory agencies. They are suggested by the Montana Department of Environmental Quality and not necessarily endorsed by all the work group members. These guidelines are only for use in areas where the use of high-density, angular rock is not practicable. (The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes [40 CFR 230.3(q)]). Sandstone or broken concrete may be acceptable alternatives to high-density, angular rock in certain situations, although local regulation may prohibit their use. The use of any river training device/structure may directly or cumulatively alter the ecology of Montana rivers and streams. Cumulative impact considerations may preclude the use of any river training device.

Bank stabilization projects are sometimes authorized under the following jurisdictions: Local Conservation District - Natural Streambed & Land Conservation Act (310); Montana Department of Fish Wildlife and Parks – Stream Protection Act (SPA124); County Floodplain Administrator - Floodplain Permit; U.S. Army Corps of Engineers – Section 404/10 Permit; Montana Department of Environmental Quality - 75-5-318, MCA Authorization; Montana Department of Natural Resources and Conservation - Navigable Rivers Land Use License/Easement.

The following optional design concepts should be considered in conjunction with the guidelines to minimize environmental/aesthetic concerns:

- Utilize rock only in the lower* portion or toe of the riprap with woody structures/features, biodegradable fabric, etc. in the upper* portions.
 - * The elevation at which the mean annual flow occurs is the division between "upper" and "lower."
- Incorporate soil in the upper portions of the project with appropriate woody (usually willow) plantings as near average water elevations as possible and herbaceous plantings elsewhere.
- Provide a temporary or permanent buffer strip (streamside area where protection promotes growth and sustenance of woody vegetation) along the project length to provide for vegetation stability where grazing or recreational use may impact plant growth.
- Preferably, plantings should be on slopes of 3:1 or flatter and irrigated, if possible.

(*Note:* Numerous documents with more detailed information are available. Contact the Natural Resource Conservation Service or the Department of Natural Resources and Conservation for their "Stream Project Manual.")

COMPLIANCE CERTIFICATION

Project or Activity: (Please attach a copy of the completed "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies.")

Upon completion of project activity, sign this certificate and return it to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
Box 200901
Helena, MT 59620

Please answer the following questions:

1. What is the source of the concrete rubble?

2. What is the type of concrete rubble (curb/gutter, foundation, etc.)?

3. What was the cost of the rubble?
(The recipient of the rubble cannot be compensated for accepting the rubble without a landfill license.)

I hereby certify that the project work performed is in compliance with all applicable permits and in compliance with the "Guidelines for Materials for Streambank Stabilization."

Signature of Project Owner

Date

I hereby certify that I provided the concrete rubble used in the project and that I did not compensate the owner for accepting the rubble.

Signature of Concrete Rubble Provider

Date