



PUBLIC NOTICE

Clean Water Act Section 401 Certification of the 2026 Nationwide Permits in Montana

November 5, 2025

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, with applicable provisions of the State water quality standards and makes these tentative individual 401 certification determinations for the U.S. Army Corps of Engineers 2026 Nationwide Permit re-issuance cycle.

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

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.

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

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.
- 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 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.

² 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 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.

PUBLIC COMMENT

Public comments are invited and **must be received by 11:59 p.m. on December 8, 2025**. Comments may be directed to the DEQ Water Quality Division, Water Protection Bureau, PO Box 200901, Helena, MT 59620. **All comments received or postmarked by 11:59 p.m. on December 8, 2025**, will be considered in the formulation of final determinations to be imposed on the permit. If you wish to comment electronically, you may e-mail DEQWPBPublicComments@mt.gov

During the public comment period provided by the notice, the Department will accept requests for a public hearing. A request for a public hearing must be in writing and must state the nature of the issue proposed to be raised in the hearing (ARM 17.30.1024).

The Department will respond to all substantive comments and issue a final decision within sixty days of this notice or as soon as possible thereafter. Additional information may be obtained upon request by calling (406) 444-5546 or by writing to the aforementioned address. The complete administrative record, including permit application and other pertinent information, is maintained at the Water Protection Bureau office in Helena and is available for review during business hours.

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