



March 6, 2017

Robert Cole  
Corps of Engineers, Helena Regulatory Office  
10 West 15<sup>th</sup> Street, Suite 2200  
Helena, Montana 59626

Re: Montana Department of Environmental Quality 401 Water Quality Certification (COE-2015-0017 RIN 0710-AA73-2017 Nationwide Permit Reissuance-Federal Register Vol. 82 No. 4)

Dear Mr. Cole:

The attachment to this letter (Parts A-E) constitutes the Montana Department of Environmental Quality'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 stream bank stabilization as referenced in the attached certification.

We look forward to continuing the close cooperation and coordination between our two agencies. Please do not hesitate to contact myself (444-0240 JKenning@mt.gov) or Jason Garber (444-2734 JGarber2@mt.gov) if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Kenning", is written over the word "Sincerely,".

Jon Kenning-Chief  
Water Protection Bureau

Cc: Tony Ott-EPA w/ Attachments

## **Water Quality Certification in Accordance With Section 401 of the Clean Water Act for the 2017 Nationwide Permits in Montana**

### **A. Certification**

DEQ is granting Section 401 Water Quality Certification (certification) for Nationwide Permits 1, 2, 4-11, 15-22, 24-27, 28-36, 38-44 and 46-50.

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

1) DEQ is granting certification for Nationwide Permits #3, #14, and #23 with the following additional condition: DEQ Water Protection Bureau – Discharge Permitting Program must be notified by the permittee within 48 hours of commencement of the regulated activity. Notification must be sent to [DEQWPBPublicComments@mt.gov](mailto:DEQWPBPublicComments@mt.gov). Notification shall include at minimum (a) the permittee name, (b) the project name, (c) the Nationwide Permit used for the project, (d) the Township, Range and Section, and (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).

2) DEQ is granting certification of Nationwide Permit #12 (utility line activities) for projects where a static or vibratory plow is used and for projects where Horizontal Directional Drilling technology is implemented and no permanent impacts to State waters will occur. For all other projects that qualify under this Nationwide Permit, DEQ denies certification.

3) DEQ is granting certification of Nationwide Permit #13 (bank stabilization), Nationwide Permit #37 (emergency watershed protection and rehabilitation), and Nationwide Permit #45 (repair of uplands damaged by discrete events) for all projects equal to or less than 300 linear feet.

### **C. Waiver**

Nationwide Permit 54 (living shorelines) is waived as this Nationwide Permit only applies to coastal shorelines and the Great Lakes.

### **D. Denial**

Nationwide Permit #51 (land based renewable energy generation facilities), and Nationwide Permit #52 (water based energy renewable energy generation facilities). Nationwide #53 (removal of low head dams) is denied for the five year cycle so that DEQ can determine if the application of this new Nationwide Permit has detrimental effects on water quality.

### **E. General Conditions for Nationwide Permits**

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

- 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 stream bank 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.

### **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.

## **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.")

