



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

April 20, 2012

Todd N Tillinger
Corps of Engineers, Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena, Mt. 59626

Subject: Montana Department of Environmental Quality 401 Water Quality Certification
(COE-2010-0035. ZRIN 0710-ZA05 – 2012 Nationwide Permit Reissuance – Federal
Register 76 FR 9174)

Dear Todd:

The attachment to this letter (Parts A - D) constitutes the Montana Department of Environmental Quality's (DEQ) final Section 401 Water Quality Certification 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 efforts our agencies have fostered over recent years. Please do not hesitate to contact me if you have any questions 444-4969 – jchambers@mt.gov or Jeff Ryan 444-4626 – jeryan@mt.gov.

Sincerely,

Jenny Chambers, Chief
Water Protection Bureau

cc: Toney Ott, EPA w/ Attachments
Julie Dalsoglio, EPA w/ Attachments



April 20, 2012

**Water Quality Certification In Accordance With Section 401 of the Clean Water Act For
The 2012 Nationwide Permits in Montana**

A. Certification

DEQ is granting Section 401 Water Quality Certification (certification) for Nationwide Permits 1, 2, 4-11, 15-22, 24-25, 28-36, 38-44 and 46-50 with the general conditions in part D. below.

B. Special Conditions for Specific Nationwide Permits

1) DEQ is granting certification for Nationwide Permits #3, #14, and #23 with the general conditions in part D. below and the following 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 WPBPublicNotices@mt.gov or fax (406) 444-1374 Attention Water Protection Bureau. Notification shall include at minimum (a) the permittee name, (b) the project name, (c) the Nationwide Permit used and Army Corp. of Engineers file number 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) with the general conditions in part D. below for projects where a static or vibratory plow is used. 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) with the general conditions in part D. below for all projects equal to or less than 300 feet in length.

C. Denial

DEQ denies certification for Nationwide Permit #27 (stream and wetland restoration), Nationwide Permit #51 (land based renewable energy generation facilities), and Nationwide Permit #52 (water based energy renewable energy generation facilities).

D. 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/stormwater 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 (also attached). Tires may not be used to stabilize any banks or shores 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. 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.

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 discharge, should be directed to a detention basin of unspecified size prior to discharge into state waters.

6) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap underlayment. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and viable plant material and/or root-stock. (A technique specification example is available upon request).

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.

For answers to questions or copies of the Response to Comments by mail or e-mail, contact Marilyn Pelo, Water Protection Bureau, at (406) 444-0574 or mpelo@state.mt.us.

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: (Please attach 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
Permitting & Compliance Division/Water Protection Bureau
Box 200901
Helena, MT 59620-0901

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
