



Montana Department of  
**ENVIRONMENTAL QUALITY**

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MAY 08 2007

Brian Schweitzer, Governor

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

May 4, 2007

Allan Steinle  
Corps of Engineers, Helena Regulatory Office  
10 West 15<sup>th</sup> Street, Suite 2200  
Helena, Mt. 59626


Subject: Montana Department of Environmental Quality 401 Water Quality Certification  
(60 day response letter of March 23, 2007 Re: March 19, 2007 Federal Register Notice  
72FR 11092 – Re-issuance of Nationwide Permits)

Dear Allan:

The attachments to this letter (A. & B.) constitute the Montana Department of Environmental Quality's (DEQ) final 401 Water Quality Certification position on the subject Nationwide Permits (NWP). As we had indicated in staff discussions, the following certification does not involve a major departure from the process we have traditionally worked under. It should not result in an undue burden to either of our agencies, while still providing adequate water quality protection:

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 – [blovelace@mt.gov](mailto:blovelace@mt.gov) or Jeff Ryan 444-4626 – [jeryan@mt.gov](mailto:jeryan@mt.gov).

Sincerely,

  
Bonnie Lovelace, Chief  
Water Protection Bureau

cc: Toney Ott, EPA  
Julie Dalsoglio, EPA



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**Water Quality Certification In Accordance With Section 401 of the Clean Water Act For  
The 2007 Nationwide Permits in Montana**

**A. General Conditions for Nationwide Permits**

- 1) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment plants in wetlands.
- 2) This certification does not authorize construction of dams, except for stream restoration projects and temporary dams associated with construction activity.
- 3) This certification requires that materials used in stream bank stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 guidelines for materials for stream bank stabilization.
- 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 bridge decks shall, to the maximum extent practicable, incorporate design features that do not allow the direct drainage of deck run-off laden with sand/salt, to discharge directly into state waters.

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

- 1) 401 Water Quality Certification is granted for Nationwide Permits 1-11, 14 -25, 28-44, 46-50.

2) Nationwide Permit #12 (utility line activities) is certified for fiber optic projects where a static or vibratory plow is used, there are less than 12 stream crossings or the crossing is done in the dry. For all other projects that qualify for this NWP, DEQ denies 401 Water Quality Certification. This will allow DEQ to consider water quality standard related conditions for smaller projects that would not qualify for our review under the Montana Major Facilities Siting Act.

3) DEQ denies 401 Water Quality Certification for Nationwide Permit # 27 (stream and wetland restoration activities) for projects in all water bodies, including projects that involve 303 (d) listed water quality limited water bodies. Traditionally, DEQ waived certification for non-listed water bodies, but due to on going listing and de-listing of water bodies in the program, DEQ reserves the 401 Water Quality Certification option for all water bodies. This will give DEQ the option of providing Total Maximum Daily Load (TMDL) monitoring conditions for projects that may qualify for TMDL restoration type activities.

4) DEQ denies 401 Water Quality Certification for Nationwide Permit #13 (bank stabilization) for projects greater than 300 lineal feet in all water bodies. This will allow us to further our goals of improving bank stabilization techniques and also complement TMDL projects involving impairments related to habitat alterations. As always, our staff will coordinate with your staff to define certain water bodies and project sizes that will not require our 401 Certification review.

5) DEQ denies 401 Water Quality Certification for Nationwide Permit #45 (repair of uplands damaged by discrete events) Since this is one of the new Nationwide permits, we want to reserve our 401 Water Quality Certification option to see how and to what degree it will be applied to river and stream projects.