PERMITTING

Many permits may be applicable to projects affecting stream bed, banks, or floodplain areas. These may include:

- Natural Streambed and Land Preservation Act (310 Permit)
- Montana Stream Protection Act (SPA 124 Permit)
- Montana Floodplain and Floodway Management Act (Floodplain Permit)
- Clean Water Act (Section 404 Permit)
- Rivers and Harbors Act (Section 10 Permit)
- Short-term Turbidity Standard (318 Permit)
- Montana Land-use License or Easement on Navigable Waters
- Montana Point Discharge Elimination System (MPDES) Stormwater Permit
- State Streamside Management Zone Law (SMZ)

These permits have similar information requirements, and a joint application is required to process these applications except for MPDES and SMZ. Additional information is usually required for a floodplain permit and a land use license. An electronic version of the joint permit application is available online at www.dnrc.state.mt.us/permit.html.

Detailed information on individual permits is found in *A Guide to Stream Permitting in Montana* available from:

Montana Association of Conservation Districts
501 North Sanders
Helena, Montana 59601

This guide is also available online at www.dnrc.state.mt.us/cardd/strmpmt/stream.htm. Conservation district supervisors are not responsible for seeing that an applicant obtains all necessary permits.

Natural Streambed and Land Preservation Act (310 Permit)

This permit is required for any private, non-governmental person or entity that proposes to work in or near a perennial stream on public or private land. The permit is necessary for any activity that physically alters or modifies the bed or immediate banks of a perennially flowing stream. Joint application participant.

Contact: Local conservation district, Montana Association of Conservation Districts (above), or:

Conservation Districts Bureau
Montana Department of Natural Resources and Conservation
1625 11th Ave
P.O. Box 201601
Helena, Montana 59620-1601
Phone: (406) 444-6667

Montana Stream Protection Act (SPA 124 Permit)

This permit is required by any state, county, or municipal agency, and the U.S. Bureau of Land Management and U.S. Forest Service, that proposes a project requiring alteration of the bed or banks of any stream, perennial or otherwise. Joint application participant.

Contact: **Local office of Montana Department of Fish, Wildlife and Parks**

Montana Floodplain and Floodway Management Act (Floodplain Permit)

This permit is required for anyone planning new construction within a designated 100-year floodplain. Check with your local planning office to determine whether a 100-year floodplain has been designated for the stream of interest. Joint application participant in most counties.

Association of State Floodplain Managers
Montana Department of Natural Resources and Conservation
48 North Last Chance Gulch
P.O. Box 201601
Helena, Montana 59620-1601
Phone: (406) 444-6654 or (406) 444-6610
FAX: (406) 444-0533

Federal Clean Water Act (404 Permit)

This permit is required for any person, agency, or entity, either public or private, proposing a project that will result in the discharge or placement of dredged or fill material into waters of the United States. *Waters of the United States* includes lakes, rivers, streams (including intermittent), wetlands, and other aquatic sites. Joint application participant.

PERMITTING (*continued*)

U.S. Army Corps of Engineers
Federal Building
301 S. Park, Drawer 10014
Helena, Montana 59626-0014
Phone: (406) 441-1375
FAX: (406) 441-1380

Rivers and Harbors Act (Section 10)

This permit is required for construction of any structure in, under, or over a federally listed navigable water of the United States, the excavation or deposition of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. Navigable waters in Montana are the Missouri River downstream of Three Forks, the Yellowstone River downstream of Emigrant, and the Kootenai River from the Canadian border to Jennings, Montana. Joint application participant.

U.S. Army Corps of Engineers
(address above)

Short-term Turbidity Standard (318 Permit)

This permit is required for any person, agency, or entity, either public and private, initiating a short-term activity that may cause unavoidable short-term violations of state surface water quality standards. The major application of this law is related to sediments and turbidity caused by construction or other activities. Joint application participant.

Water Protection Bureau
Permitting and Compliance Division
Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
Phone: (406) 444-3080
FAX (406) 444-1374

Montana Land-use License or Easement on Navigable Waters

This permit is required for any entity proposing a project on lands below the low water mark of navigable waters.

***Contact*: DNRC Land Office** or

Special Use Management Bureau
Montana Department of Natural Resources and Conservation
1625 11th Ave
P.O. Box 201601
Helena, Montana 59620-1601
Phone: (406) 444-2074

Montana Point Discharge Elimination System (MPDES) Stormwater Permit

This permit is required for any person, agency, or entity proposing construction, industrial, or mining activity that will discharge stormwater to Montana waters and construction that will disturb more than one acre within 100 feet of streams, rivers, or lakes.

Water Protection Bureau
Permitting and Compliance Division
Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, Montana 59620-0901
Phone: (406) 444-3080
FAX: (406) 444-1374

State Streamside Management Zone Law (SMZ)

This permit is required for any landowner or operator conducting forest practices that will access, harvest, or regenerate trees on a defined land area for commercial purposes on private, state, or federal lands.

Forestry Division
Montana Department of Natural Resources and Conservation
2705 Spurgin Road
Missoula, Montana 59801
Phone: (406) 542-4300

DESIGN EXPECTATIONS FROM A PERMITTING STANDPOINT

Design requirements depend upon the granting agency and expectations that may vary according to local policy. In all cases, stream project designs must be sufficiently complete to demonstrate the probability of success and any potential impacts of the proposed project. Engineered designs may be required, especially for larger scale, complicated, or intensive projects.

For all stream project permitting, a detailed description of the proposed work should include, at a minimum:

- ❏ Site map or drawing, including legal location.
- ❏ Dimensions of site where work is proposed. Use the high water mark, if known, as a point of measure.
- ❏ Quantities and types of materials (rock, trees, gravel, erosion fabric, etc).
- ❏ Construction techniques, including equipment used.
- ❏ Where excavated material will be placed.
- ❏ Revegetation and weed management plans.
- ❏ Timing of proposed work.
- ❏ How impacts to fish and aquatic habitat will be minimized.
- ❏ How impacts to the channel, erosion, sedimentation effects on water quality and stream flow, and the risks of flooding will be minimized.
- ❏ Expected benefits of the work.
- ❏ Names and addresses of adjacent landowners are required by some agencies, however, most conservation districts do not require this information.

A complete description of all proposed work is important, because any construction activity not explicitly described in the permit in writing may be considered to be a violation of the permit conditions. The applicant is responsible for providing enough information in his or her application to answer questions regarding potential impacts and mitigation of impacts.

The **310** permitting process requires the project to be effective for the intended purpose and protective of the natural streambed and banks. The 310 process is not intended to provide technical design review, certification of design, or substitute for engineering expertise.

A site visit by conservation district members is generally required to review proposed work.

The **124** permit requires projects to protect Montana's fishing waters such that they remain for all time in their natural existing state, except as may be necessary and appropriate after due consideration of all factors involved. Project applications are generally followed by a site visit by the local fisheries biologist. The permit includes requirements to protect fish and wildlife habitat and natural stream function.

The **Floodplain** permit is the local extension of DNRC floodplain and floodway management rules that are intended to minimize flood damage with floodplain developments. County floodplain permits may require engineered design to ensure certain criteria are met, such as stability in a 100-year flood, demonstration of no adverse impacts up or downstream, and analysis of effects on elevation of a 100-year flood.

The **Federal 404** permit focuses on waters of the United States, which includes lakes, reservoirs, ponds, stream channels with an ordinary high water mark, and most wetlands. This permit is required for placement of fill material in U.S. waters. U.S. Army Corps of Engineers 404 permits are required on many stream projects requiring a 310 permit, as well as on wetland areas and intermittent and ephemeral channels that have a high water mark. Many smaller stream or river projecdts fall under the streamlined 404 "nationwide" permitting system, which expedites processing of the application.

DESIGN EXPECTATIONS FROM A PERMITTING STANDPOINT *(continued)*

The **318** permit focuses on ensuring that proper sediment control measures are taken during construction to minimize impacts to water quality. Requirements are generally satisfied by the 310 permit for smaller projects that release minimal sediment to the stream. A separate 318 permit must be obtained for projects that have the potential to release significant amounts of sediment during construction.

Montana Point Discharge Elimination System (MPDES) considers water quality and sediment control on construction sites, and seeks to ensure that proper measures are taken to minimize potential impacts to surface water. Construction projects that have site disturbance near surface water, or that could discharge runoff to surface water, may require the MPDES permit. At a minimum, the permit requires a site drainage control plan with approved practices to minimize potential erosion and runoff from the site.

WETLANDS

Stream projects generally affect wetland areas to some extent, even if only along the edge of the stream channel. Impacts may be minimal, such as temporary access across soft ground during construction, or may include permanent changes, such as dikes, fill, or excavation. Although stream permitting may not address all aspects of specific wetland impacts, projects that directly or inadvertently affect wetlands can potentially be regulated by the 404 permitting process.

Identifying wetland areas that are "jurisdictional" under Clean Water Act Section 404 is not always obvious. Wetlands are defined by a certain combination of soils, vegetation, and hydrology. Wetland does not simply mean areas with standing, shallow water and cattails. Pasture, floodplain, swampy areas flooded from ditch leakage, may all be subject to wetland law. In more difficult situations, a trained specialist is required to make a "wetland delineation." National Resources Conservation Service staff, U.S. Army Corps of Engineers, and other trained professionals can make these determinations.

Because specific exemptions exist and federal wetland law changes over time, it is difficult to generalize about which stream projects or related activities may be regulated. The safe approach is to submit a 404 application to the U.S. Army Corps of Engineers, and let the agency make the determination about the project.

Applicants will be expected to describe where excavated fill materials will be placed (even if off-site), and the quantities and types of imported materials (such as rock) used on the project. Temporary or permanent access roads for the project should be accurately described.

Permitting through the Clean Water Act Section 404 may also require an evaluation of cultural resources, endangered species, historic structures, and other considerations related to federal law.

Wetlands frequently include areas adjacent to the stream channel that may not be wet during most of the year.

Wetland regulations may apply to activities in residential, agricultural, and industrial sites.

"Jurisdictional" wetlands include the entire area in this photo, not just the obviously wet area.

STORMWATER AND EROSION CONTROL BMPs FOR CONSTRUCTION

Construction planning and Best Management Practices (BMPs)

Efficient project planning can greatly reduce sedimentation by:

- Reducing the project duration.
- Reducing the number of times machinery enters the channel.
- Reducing overall site disturbance.
- Identifying appropriate BMPs for sediment control.

All projects should seek to:

- Minimize site disturbance.
- Preserve existing vegetation as much as possible.
- Use erosion control measures (hay bales, silt fence, drainage features, etc.).
- Reseed disturbed areas.

Dewatering construction areas with pumps requires a permit when discharging to state waters.

Sediment control is water control

Avoid excavation in running water whenever possible. Even gravelly substrates can release significant amounts of fine sediment during construction. Dewatering options may include:

- Isolating the work site with barriers (berms, tarps, coffer dams, sheet pile).
- Rerouting the channel around the work site.
- Dewatering with pumps, or diversion into irrigation ditches.

Dewatering a construction area requires a discharge permit to release discharge to surface water. Turbid water generally must be filtered through sediment retention structures prior to release. When dewatering the site causes more disturbance of the stream than installing the project in running water, silt fences, straw bales, or other sediment trapping devices should be used.

Construction timing

On river projects, the best construction time is generally during low flows in mid-summer, and sometimes in mid-winter when the ground is frozen. Fisheries, streamflows, and recreational concerns may restrict construction windows.

Construction activities with the potential to release fine sediments or dewater channels should be planned to avoid disturbing spawning fish and egg incubation. Both spring and fall periods may have spawning runs depending on fish species in the drainage. State and federal fish biologists can make recommendations during the permitting process. Construction timing may also need to consider impacts on recreational use, such as rafting or fishing.

WORKING WITH A LANDOWNER'S REPRESENTATIVES

Stream permit applications are often submitted by the landowner's representative: a consultant, construction contractor, or realtor. This person may not actually perform the project work.

A consultant, construction contractor, or engineer is often hired to design and oversee a proposed project. This person may be directly involved in the entire permitting process and implementation phase. For any of several reasons (costs, timing, etc.), however, landowners may change consultants or contractors during the process, or may plan to do the actual construction work themselves.

Out-of-state landowners sometimes hire a realtor to obtain the needed stream permits as a service to them. In these cases, the realtor's involvement usually ends here, and he or she will not be involved in the project construction stage.

It is therefore imperative that the landowner signs the permit application form, authorizing the consultant, contractor, or realtor to represent him. The decision form must also be signed by the landowner to ensure that he or she agrees to construct the project as permitted. All permit correspondence should be sent to both the landowner and his or her representative throughout the permitting process to ensure that the landowner receives all pertinent information. **The landowner is ultimately responsible for complying with conditions of the permit.**

WORKING WITH UTILITY COMPANIES ON STREAM PERMITS

When a utility company applies for a stream permit, the landowner's signature is not necessary because the company must obtain a legal right-of-way from the landowner before beginning project construction.