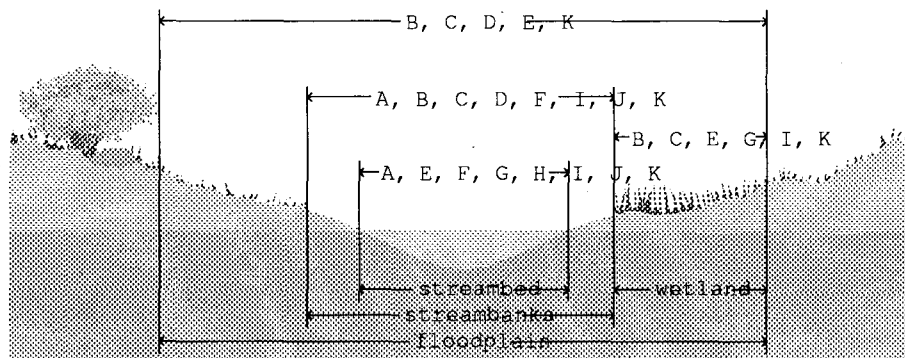


# APPENDIX C PERMITS COMMONLY REQUIRED DURING DROUGHT

## A GUIDE TO STREAM PERMITTING IN MONTANA



### GUIDE TO REQUIRED PERMITS

Using the diagram above, determine where your project will take place: streambed, streambanks, wetlands, or floodplain. The letters in the diagram refer to the required permits listed below and described on the following pages.

Permits that may be necessary:

- A. Montana Stream Protection Act (SPA Permit)
- B. Storm Water Discharge General Permits
- C. Streamside Management Zone Law
- D. Montana Floodplain and Floodway Management Act (Floodplain Development Permit)
- E. Short-Term Exemption from Montana's Surface Water Quality Standards (3A Authorization)
- F. Montana Natural Streambed and Land Preservation Act (310 Permit)
- G. Montana Land-Use License or Easement on Navigable Waters
- H. Montana Water Use Act (Water Right Permit)
- I. Federal Clean Water Act (404 Permit)
- J. Federal Rivers and Harbors Act
- K. Other laws that may apply, depending upon your location and activity

# **MONTANA STREAM PROTECTION ACT (SPA Permit)**

## **Who Must Apply**

Any agency or subdivision of federal, state, county, or city government proposing a project that may affect the bed or banks of any stream in Montana.

## **Activities Requiring a Permit**

Any project including the construction of new facilities or the modification, operation, and maintenance of an existing facility that may affect the natural existing shape and form of any stream or its banks or tributaries.

## **Purposes of the Law**

- To protect and preserve fish and wildlife resources.
- To maintain streams and rivers in their natural or existing state.

## **Who Administers the Law**

Department of Fish, Wildlife and Parks (DFWP).

## **Application Procedure/Timeline**

Any agency or unit of government planning a project must submit a Notice of Construction (application) to the Department of Fish, Wildlife and Parks, which has up to 60 days to review the application, perform an on-site investigation, and approve, modify, or deny the application. There is no application fee.

For more information contact:

Habitat Protection Bureau  
Fisheries Division  
Department of Fish, Wildlife and Parks  
1420 East Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701  
(406) 444-2449

# **STORM WATER DISCHARGE GENERAL PERMITS**

## **Who Must Apply**

Any person, agency, or entity, either public or private, proposing construction, industrial, or mining activity that will discharge storm water to state waters.

## **Activities Requiring a Permit**

- Construction activity that will disturb more than 5 acres total or more than 1 acre total if that acre is located less than 100 feet from state waters.
- Industrial activity that will discharge storm water as a point source to state waters.
- Mining or oil and gas activity in which storm water will come into contact with overburden, raw material, intermediate products, finished products, or waste products located on the site of such operations (including active and inactive mine sites) and discharge to state waters.

## **Purposes of the Law**

- To prevent degradation of state waters from pollutants such as sediment, industrial chemicals or materials, heavy metals, and petroleum products.
- To protect existing water quality.
- To monitor the effectiveness of best management practices used to reduce pollutant loads.

### **Who Administers the Law**

Water Quality Bureau, Department of Environmental Quality.

### **Application Procedure/Timeline**

An application must be submitted 30 days prior to beginning a construction project or starting operation of a new facility.

For more information contact:

Water Quality Bureau  
Department of Environmental Quality  
1400 Broadway  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2406

## **STREAMSIDE MANAGEMENT ZONE LAW**

### **Who Must Apply**

Any landowner or operator conducting a series of forest practices that will access, harvest, or regenerate trees on a defined land area for commercial purposes on private, state, or federal lands.

### **Activities Requiring a Permit**

this law prohibits the following timber activities within at least 50 feet of any stream, lake, or other body of water. The Department of Natural Resources and Conservation must approve any exceptions to these prohibited practices.

- Broadcast burning
- Operating wheeled or tracked vehicles except on established roads
- Clearcutting
- Constructing roads in the Streamside Management Zone except when necessary to cross a stream or wetland
- Handling, storing, applying, or disposing of hazardous or toxic material in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants
- Casting road material into a stream, wetland, or watercourse
- Depositing slash in streams or other water bodies

### **Purposes of the Law**

- To protect the quality and quantity of forest waters.
- To conserve the integrity of Montana's streamside zones.

### **Who Administers the Law**

Department of Natural Resources and Conservation (DNRC).

### **Application Procedure/Timeline**

DNRC must be notified prior to beginning **any** forest practice. A request to conduct an alternative practice must be submitted to the appropriate DNRC field office. Alternative practices will require an environmental review. The request will be reviewed and an initial response issued within 10 days.

For more information contact:

Forestry Division  
Department of Natural Resources and Conservation  
2705 Spurgin Road  
Missoula, MT 59801  
(406) 542-4300 or  
Local DNRC Field Office

# **MONTANA FLOODPLAIN AND FLOODWAY MANAGEMENT ACT (Floodplain Development Permit)**

## **Who Must Apply**

Anyone planning new construction within a designated 100-year floodplain. Check with local planning officials or the Floodplain Management Section of the Department of Natural Resources and Conservation to determine whether a 100-year floodplain has been designated for the stream of interest.

## **Activities Requiring a Permit**

New construction including, but not limited to, placement of fill, roads, bridges, culverts, transmission lines, irrigation facilities, storage of equipment or materials, and excavation; new construction, placement, or replacement of manufactured homes; and new construction, additions, or substantial improvements to residential and commercial buildings.

## **Purpose of the Law**

- To restrict floodplain and floodway areas to uses that will not be seriously damaged or present a hazard to life, if flooded, thereby limiting the expenditure of public tax dollars for emergency operations and disaster relief.

## **Who Administers the Law**

Floodplain Development Permits are available from the local floodplain administrator, who may be the city/county planner, sanitarian, building inspector, town clerk, or county commissioner.

## **Application Procedure/Timeline**

Permit applications are available from the local floodplain administrator or from the Department of Natural Resources and Conservation. Application fees are established by the local government and vary widely throughout the state. The application process may take up to 60 days.

Information and assistance may be obtained from:  
Floodplain Management Section  
Department of Natural Resources and Conservation  
1520 East Sixth Avenue  
P.O. Box 202301  
Helena, MT 59620-2301  
(406) 444-6610  
or  
Local Floodplain Administrator

## **SHORT-TERM EXEMPTION FROM MONTANA'S SURFACE WATER QUALITY STANDARDS (3A Authorization)**

## **Who Must Apply**

Any person, agency, or entity, both public and private, initiating a short-term activity that may cause unavoidable short-term violations of state surface water quality standards for turbidity, total dissolved solids, or temperature.

## **Activities Requiring an Authorization**

Any activity in any state water that will cause unavoidable short-term violations of water quality standards. "State water" includes any body of water, irrigation system, or drainage system, either

surface or underground, including wetlands, except for irrigation water where the water is used up within the irrigation system and the water is not returned to other state water.

**Purposes of the Law**

- To provide short-term exemptions from water quality standards to certain activities carried out in accordance with conditions prescribed by the Department of Environmental Quality.
- To protect water quality.
- To minimize sedimentation.

**Who Administers the Law**

Water Quality Bureau, Department of Environmental Quality.

**Application Procedure/Timeline**

A 3A Authorization must be obtained prior to initiating a project. The authorization may be obtained from the Water Quality Bureau, or may be waived by the Department of Fish, Wildlife and Parks during its review process under the Natural Streambed and Land Preservation Act (310 Permit) or the Stream Protection Act (SPA Permit). Individual applications submitted to the Water Quality Bureau are normally processed within 14 days. Authorizations waived under the 310 or SPA permit processes correspond to the time frame under each permit system, usually 30 to 60 days. There is no application fee.

For more information contact:  
Water Quality Bureau  
Department of Environmental Quality  
1400 Broadway  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2406

**MONTANA NATURAL STREAMBED AND  
LAND PRESERVATION ACT  
(310 Permit)**

**Who Must Apply**

Any private, **nongovernmental** individual or entity that proposes to work in or near a stream on public or private land.

Activities Requiring a Permit

Any activity that physically alters or modifies the bed or banks of a stream.

**Purposes of the Law**

- To minimize soil erosion and sedimentation.
- To protect and preserve streams and rivers in their natural or existing state.
- To prevent damage to the lands and property immediately adjacent to streams and rivers.

**Who Administers the Law**

The board of supervisors of the conservation district in which the project takes place.

**Application Procedure/Timeline**

A person planning a project must contact the conservation district office to obtain a permit application prior to any activity in or near a stream. After submission of an application to the conservation district office, district supervisors must determine within five days of their next monthly

meeting if the proposed activity requires a 310 permit. If a permit is required, a team composed of a district supervisor; a Department of Fish, Wildlife and Parks biologist; and the landowner conducts a site inspection. **The supervisors have 60 days from the date of application to approve or deny the permit.** There is no charge for a 310 permit.

For more information contact:

Your Local Conservation District

or

Montana Association of Conservation Districts

501 North Sanders

Helena, MT 59620

(406) 443-5711

or

Conservation Districts Bureau

Department of Natural Resources and Conservation

1520 East Sixth Avenue

P.O. Box 202301

Helena, Montana 59620-2301

(406) 444-6667 Helena

or

your local conservation district office

## **MONTANA LAND-USE LICENSE OR EASEMENT ON NAVIGABLE WATERS**

### **Who Must Apply**

Any entity proposing a project on lands below the low water mark of navigable waters as determined by the Department of Natural Resources and Conservation (DNRC).

### **Activities Requiring a Permit**

The construction, placement, or modification of a structure or improvement on lands below the low water mark of navigable streams. If in doubt, contact the DNRC Area Land Office with jurisdiction over the project area for a determination of the navigability of the stream and the location of the low water mark.

This permit program does not apply to mining activities in navigable streams or lakes. Those activities are addressed by the department's Minerals Management Bureau.

### **Purposes of the Law**

- To protect riparian areas and the navigable status of the water body.
- To provide for the beneficial use of state lands for public and private purposes in a manner that will provide revenues without harming the long-term capability of the land or restricting the original commercial navigability.

### **Who Administers the Law**

Department of Natural Resources and Conservation.

### **Application Procedure/Timeline**

A DNRC land-use license or easement application, along with the nonrefundable application fee and the Application for Licensing Structures & Improvements on Navigable Water Bodies (Form DS-432), must be submitted to the appropriate Area Land Office, located in Kalispell, Missoula,

Helena, Lewistown, Billings, or Miles City. The Area Land Office staff will review the application, conduct a field investigation if necessary, and file an environmental action checklist. A written report and recommendation is then submitted to the Surface Management Bureau in Helena, which makes the final determination and recommends stipulations as necessary. A Land-Use License can normally be reviewed, approved, and issued within 60 days upon the payment of the \$25 application fee and a minimum annual rental fee set by the department. The license may be held for a maximum period of 10 years, with the ability to request renewal for an additional 10 years. An easement requires approval from the Board of Land Commissioners, which normally takes up to 90 days. The current easement application fee is \$50 with an additional easement fee that varies based upon 50 percent of the appraised value of the adjoining property.

For more information contact:  
DNRC Area Land Offices or Surface Management Bureau  
Department of Natural Resources and Conservation, 1520 East Sixth Avenue,  
Helena, MT 59620-2301 (406) 444-2074.

## **MONTANA WATER USE ACT (Water Right Permit)**

### **Who Must Apply**

Any person, agency, or governmental entity intending to acquire new or additional water rights or change an existing water right in the state.

### **Activities Requiring a Permit**

**General Rule** - A person must obtain a beneficial water use permit **before commencing** to construct new or additional diversion, withdrawal, impoundment, or distribution works for appropriation of **groundwater over 35 gallons per minute or 10 acre-feet per year or for any surface water.**

**Exceptions** - Groundwater appropriations of 35 gallons per minute or less and 10 acre-feet or less and stockwater impoundments of less than 15 acre-feet must first be appropriated and put to beneficial use before a water right will be issued.

### **Types of Water Rights**

**Provisional Permit** - Grants the use of water for a specific amount and purpose.

**Temporary Permit** - The same as the provisional permit, except it has an expiration date.

**Certificate of Water Right** - Issued on groundwater appropriations of 35 gallons per minute or less and 10 acre-feet or less.

**Authorization to Change** - Allows an appropriator with a recognized water right to change the place of use, point of diversion, purpose of use, or place of storage and maintain the priority date of the initial water right.

**Temporary Change** - Allows an appropriator to change the water right temporarily for a period of up to ten (10) years. No authorization is required for the water right to revert to the original purpose, point of diversion, place of use, or place of storage after the term expires.

### **Purposes of the Law**

- To provide a permit and certificate system of water rights administration similar to systems used in other Western states.
- To maintain a general adjudication of all existing water rights in the state.
- To implement a centralized record system in addition to the local courthouse records.

**Who Administers the Law**

Water Rights Bureau, Department of Natural Resources and Conservation (DNRC).

**Application Procedure/Timeline**

Water right application forms are available at all 56 county clerk and recorders' offices and at the nine Water Resources Regional Offices **located in Billings, Bozeman, Glasgow, Havre, Helena, Kalispell, Lewistown, and Missoula.**

**Water right applications may take up to six months to complete. The water permit application fee is \$100.00. The fee for an application for change is \$100.00. The fee for a Certificate of Water Right on groundwater developments of 35 gpm or less and 10 acre-feet or less is \$25.00.**

For more information, contact:

Water Rights Bureau  
Department of Natural Resources and Conservation  
1520 East Sixth Avenue  
P.O. Box 202301  
Helena, MT 59620-2301  
(406) 444-6610

or

Local DNRC Water Resources Regional Office

**FEDERAL CLEAN WATER ACT  
(404 Permit)**

**Who Must Apply**

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" include lakes, rivers, streams, wetlands, and other aquatic sites.

**Activities Requiring a Permit**

Any activity that will result in the discharge or placement of dredged or fill material into waters of the United States, including wetlands.

**Purpose of the Law**

- To restore and maintain the chemical, physical, and biological integrity of the nation's waters.

**Who Administers the Law**

The U. S. Army Corps of Engineers (Corps). The Environmental Protection Agency also has regulatory review and enforcement functions under the law.

**Application Procedure/Timeline**

Any person, agency, or entity, either public or private, planning a project must submit an application to the Corps for review. Permit authorization varies depending on the size and scope of the intended project. Activities that meet the conditions for a Nationwide or Regional General Permit may be approved in 10 days or less. Individual Permits are processed individually and require a public review period. Permit approval may take 60 to 90 days. Application fees for Individual Permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information contact:

U. S. Army Corps of Engineers  
1520 East Sixth Avenue  
P.O. Box 202301  
Helena, MT 59620-2301  
(406) 444-6670



# FEDERAL RIVERS AND HARBORS ACT

## **Who Must Apply**

Any person, agency, or entity, either public or private, proposing any alteration of, or any construction activity in, on, or over any federally-listed **navigable** water of the United States.

## **Activities Requiring a Permit**

The construction of any structure in or over any federally-listed navigable waters of the United States, the excavation from or depositing 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 from Three Forks downstream to the Montana-North Dakota border, the Yellowstone River from Emigrant downstream to its confluence with the Missouri River, and the Kootenai River from the Canadian border downstream to Jennings, Montana.

## **Purpose of the Law**

- To protect the quality and quantity of navigable waters of the United States.

## **Who Administers the Law**

The U. S. Army Corps of Engineers (Corps).

## **Application Procedure/Timeline**

Applications must be submitted to the Corps for review. Project approval may take 60 to 90 days. Application fees for individual permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information contact:  
U. S. Army Corps of Engineers  
1520 East Sixth Avenue  
P.O. Box 202301  
Helena, MT 59620-2301  
(406) 444-6670

## OTHER LAWS THAT MAY APPLY

### **County Septic System Regulations**

Apply to anyone proposing to construct, alter, extend, or operate a sewage treatment and disposal system. Conventional systems must be 100 feet from the 100-year floodplain and 6 feet from groundwater. Alternative designs that are 4 to 6 feet from groundwater must be approved.

Contact: County Sanitarian

### **General Mining Laws/Small Miner's Placer and Dredge Operations**

Apply to anyone operating a placer, dredge, hardrock, coal, sand, or gravel mine on private or public land.

Contact: Reclamation Division  
Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
Helena, MT 59620  
(406) 444-2074

### **Lakeshore Protection Act**

Applies to all private individuals and government entities proposing to do work in or near a body of water within a county's jurisdictional area.

Contact: County Government Offices

**Montana Dam Safety Act**

Applies to the construction, repair, or removal of any dam that impounds 50 acre-feet or more at the normal operating pool.

Contact: Dam Safety Section  
Water Operations Bureau  
Department of Natural Resources and Conservation  
1520 East Sixth Avenue  
P.O. Box 202301  
Helena, MT 59620-2301  
(406) 444-6610

**Montana Pollutant Discharge Elimination System (MPDES Permit)**

Applies to all discharges to surface water or groundwater, including those related to construction, dewatering, suction dredges, and placer mining.

Contact: Water Quality Bureau  
Department of Environmental Quality  
1400 Broadway  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2406

**Montana Water Quality Act**

Prohibits the pollution of state waters and the placement of wastes in a location where they are likely to cause pollution of any state water.

Contact: Water Quality Bureau  
Department of Environmental Quality  
1400 Broadway  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2406

**Public Water Supply Watersheds**

Requires the submission, review, and approval of detailed plans and specifications before beginning the construction or operation of any new railroad, logging road, logging camp, or electric or manufacturing plant in a public water supply watershed.

Contact: Water Quality Bureau  
Department of Health and Environmental Sciences  
1400 Broadway  
P.O. Box 200901  
Helena, MT 59620-0901  
(406) 444-2406

**Shoreline Protection and Aquatic Land Conservation Ordinances**

Apply to all private individuals and government entities proposing to work in, over, or near any stream, river, lake, or wetland on the Flathead Reservation.

Contact: Shoreline Protection Office  
Flathead Reservation Tribal Complex  
P.O. Box 278  
Pablo, MT 59855  
(406) 675-2700 ext. 368