

USACE Regulatory Program Section 404 Overview for Montana

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US Army Corps of Engineers
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Presentation Overview

- Acronyms
- USACE Regulatory Authorities
- Related Laws
- Jurisdiction - Waterways
- Jurisdiction - Activities
- Activities not requiring Corps permits
- Permit timelines and cost
- Mitigation (avoid, minimize, compensate)
- Annual USACE Workload Summary
- Current USACE Staffing Levels
- Annual USACE Montana Regulatory Budget
- Wrap-up and Questions



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Acronyms

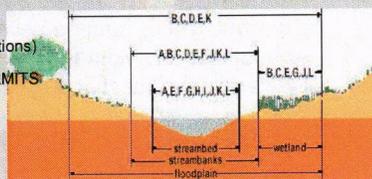
USACE = US Army Corps of Engineers
 Corps = US Army Corps of Engineers
 DA = Department of Army
 404 = Section 404 of the Clean Water Act
 CFR = Code of Federal Regulations
 BMP = Best Management Practices
 ESA = Endangered Species Act
 EPA or US EPA = US Environmental Protection Agency
 JD = Jurisdictional Determination
 NWP = Nationwide Permit



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A GUIDE TO STREAM PERMITTING IN MONTANA

- A. MONTANA NATURAL STREAMBED AND LAND PRESERVATION ACT (310)
- B. MONTANA STREAM PROTECTION ACT (SPA 124 Permit)
- C. MONTANA FLOODPLAIN AND FLOODWAY MANAGEMENT ACT
- D. FEDERAL CLEAN WATER ACT (404 Permit) ←
- E. FEDERAL RIVERS AND HARBORS ACT (Section 10 Permit) ←
- F. SHORT-TERM WATER QUALITY STANDARD FOR TURBIDITY
- G. MONTANA LAND-USE LICENSE OR EASEMENT ON NAVIGABLE WATERS
- H. MONTANA WATER USE ACT
- I. MONTANA WATER USE ACT (Water Reservations)
- J. STORMWATER DISCHARGE GENERAL PERMITS
- K. STREAMSIDE MANAGEMENT ZONE LAW
- L. OTHER LAWS THAT MAY APPLY



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Corps Regulatory Authorities:

- **Section 10** - Rivers & Harbors Act (1899)
 - ▶ **Navigable** Waters (Yellowstone, Missouri, Kootenai in Montana; different than State Navigable waters)
 - ▶ Course, condition, capacity and location
 - ▶ Most work (docks, ramps, jetties, bridges, riprap, dredging, etc.)
 - ▶ Corps and US Coast Guard

- **Section 404** - Clean Water Act (1972)
 - ▶ All waters of the U.S. (including wetlands and tributaries)
 - ▶ Discharge of dredged or fill material
 - ▶ Corps and US Environmental Protection Agency



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Related Laws

- National Environmental Policy Act (NEPA), 422 U.S.C. 4321-4347
- National Historic Preservation Act, 16 U.S.C. 470
- Endangered Species Act (ESA), 16 U.S.C. 1531 et seq.
- Fish and Wildlife Coordination Act, 16 U.S.C. 742a et seq.
- Wild and Scenic Rivers Act, 16 U.S.C. 1278 et seq.
- Sections 401 & 402 of the CWA, 33 U.S.C. 1341 (MT DEQ, EPA, Tribes)
- Others: State and Local Floodplain Management Laws, Conservation Districts / 310 law, Local laws, Tribal Regulations



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Section 10:
Any work on, over, or under the waterway

- **Not just fill placement**
- **Includes boring under or spanning.**
- **Includes**
 - ▶ **Yellowstone River downstream of Emigrant**
 - ▶ **Missouri River - entire**
 - ▶ **Kootenai River – upstream of Jennings**
 - ▶ **All Reservoirs or impoundments of those rivers.**



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Corps Regulatory Goals
under Section 404:

- **Restore and maintain the chemical, physical, and biological integrity of our nations waters.**

- **Balance the need for environmental protection of the nation's waters with the public's need to impact the waters.**



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404 Jurisdiction: Waterways

- Streams:
 - ▶ Perennial, Intermittent or Ephemeral
- Rivers:
 - ▶ Navigable and Tributaries
- Lakes & Ponds:
 - ▶ Natural or Man-made
- Wetlands:
 - ▶ Adjacent to Lakes, Rivers and Streams
- Ditches and Canals:
 - ▶ Case by Case evaluation

In Summary: "Waters of the United States" or WoUS



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404 Jurisdiction: Activities

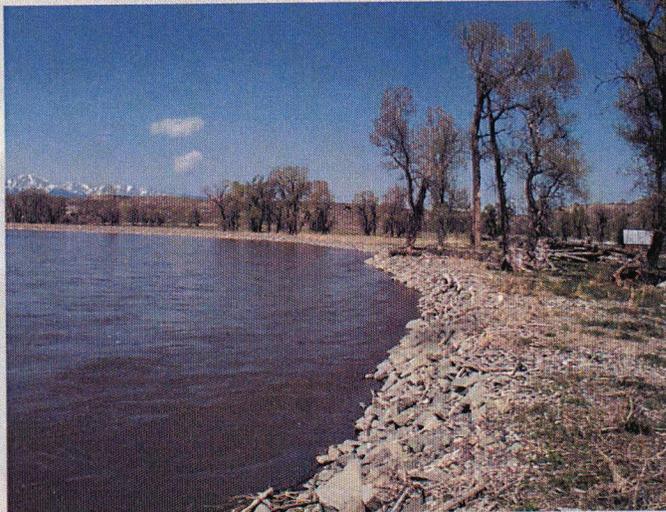
"Placement of Dredged or Fill Material"

- **Fill Material** is rock, soil, vegetation, concrete, steel, etc.
- **Dredged Material** is material dredged, excavated, or moved around from or within a water of the U.S.
- **Re-deposit** of dredged material is regulated.
- **Driven piles are not** considered fill, and are not regulated under Section 404; Section 10 still applies.
- **Waste materials** such as broken asphalt, bridge or building demolition debris, garbage, car bodies, tires, or other debris **is not fill material**; it is waste material and other laws apply.
- Permanent or Temporary discharges need permits.



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Rock may be allowable fill material.



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Levees may be allowable fill material.



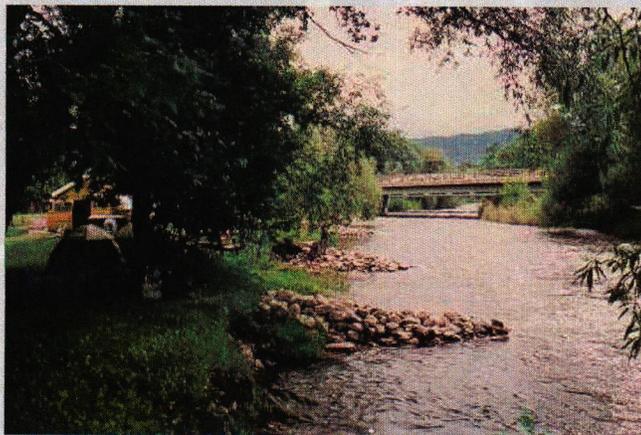
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Fabric, soil lifts, woody vegetation may be allowable fill material. (before & after)



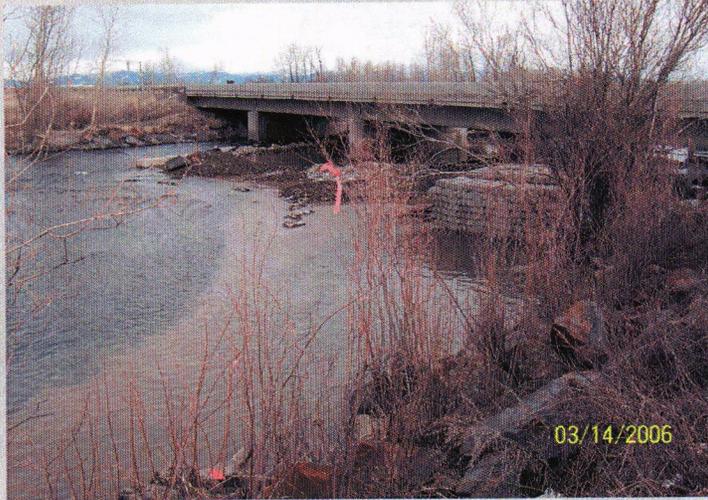
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Examples of Regulated Activities:
Bank Stabilization (Barbs and vegetation)



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Examples of Regulated Activities: Temporary Cofferd Dams & Stockpiles



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Examples of Regulated Activities: Constructed Floodplain and Stream Restoration



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Examples of Regulated Activities: Building Pads in waters or wetlands



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Debris or Waste is not allowable fill material



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Activities not requiring 404 permits

- Excavation or dredging only
- Driving across a stream
- Incidental fallback
- Placement of driven piling
 - ▶ Fence posts, utility poles, boardwalks, bridge and dock piling
- Exempt Activities (see next slide)



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Exemptions

33 CFR Part 323.4(a)(1) – (6)

(Exempt = No DA Permit needed under 404)

1. Normal farming activities such as plowing, seeding and cultivation; harvesting
2. Maintenance of authorized fills
3. Farm/stock ponds, irrigation diversions
4. Temporary sediment basins
5. State approved program under Section 208 (assumption of 404)
6. Construction of farm and forest roads, temporary mining access roads (with BMPs)



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Mitigation

33 CFR 320 and 33 CFR 332

- Mitigation in all forms must occur throughout the application and review process.
- Mitigation includes **avoiding** impacts to the extent practicable.
- Unavoidable impacts must be **minimized**.
- **Compensation** may be necessary for unavoidable impacts, and is provided by permittee.
- Compensation may occur on-site or off-site, but must be within the watershed.



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What if you don't get a permit, or do not comply with permit terms?

- Possible: complete restoration of the site
- Possible: after-the-fact permitting/mitigation
- Possible: referral to US EPA for Civil and/or Criminal enforcement
- Possible: Fines or Administrative Penalties
- Possible: Federal Prison
- All or any of the above



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Annual Workload Summary USACE Montana Regulatory

	2015 (to date)	2014	2013
Pre-Application	172	207	151
Jurisdictional Determinations	552	660	626
No Permit Required	103	109	120
Standard (Individual) Permits	6	4	10
Nationwide Permits	348	522	573
Unauthorized Activities	19	9	14



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Current USACE Staffing Level Montana Regulatory Program

10 Current Full-Time Positions*

- 1 – State Program Manager
- 5 – Senior Project Managers (1 Vacant)
- 3 – Project Managers
- 1 – Administrative Assistant

*Plus one part-time college student for records management.



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FY 2015 USACE Montana Regulatory Budget

Total Annual Cost \$1,344,664 as follows:

\$814,894 Salary and Benefits

\$529,770 Overhead (rent, travel, supplies, vehicles, etc.)



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Montana Regulatory Program USACE – Omaha District

Helena Regulatory Office

10 West 15th Street, Suite 2200
Helena, Montana 59626

(406) 441-1375

Missoula Regulatory Office

1600 North Avenue West, Suite 105
Missoula, MT 59801

(406) 541-4845

Billings Regulatory Office

Post Office Box 2256
Billings, Montana 59103

(406) 657-5910

2 PMs in Billings
2 PMs in Missoula

4 PMs and State Manager in Helena



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<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx>



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Questions?



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