

Chapter 29

PERMITS REQUIRED

MDT ENVIRONMENTAL MANUAL

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Chapter 29

PERMITS REQUIRED

29.1 OVERVIEW

The analysis of environmental impacts of a proposed highway project for compliance with the *National Environmental Policy Act* (NEPA) (42 USC 4321, et seq.) and the *Montana Environmental Policy Act* (MEPA) (MCA 75-1-101, et seq.) must include consideration of permits required for the proposed action and the effects of the permits on avoidance, minimization and mitigation of adverse environmental impacts. The extent to which various permit requirements apply to a project depends upon the nature and extent of the project's involvement with and effects on various resources including rivers, wetlands, streams, riparian areas, lakes, ponds, navigable waters, floodplains, air quality and Tribal lands.

29.1.1 Potentially Applicable Permits

Permit requirements that may apply are administered at the Federal, State, Tribal and local levels and include, but are not limited to, the following:

1. Federal. The following Federal Permits may apply:
 - *Clean Water Act*, Section 404 permit, obtained from the US Army Corps of Engineers (COE), for discharge of dredge or fill material into waters of the United States, including wetlands;
 - *Clean Water Act*, Section 402 National Pollutant Discharge Elimination System (NPDES) permit, obtained by the project contractor (the contractor and MDT are co-permittees) from the US Environmental Protection Agency (EPA) for construction projects located in Indian Country involving a point-source discharge of pollutants, including storm water discharges associated with construction that disturbs one acre (0.4 ha) or more of land area;
 - *Clean Water Act*, Section 401 water quality certification, obtained from Montana Department of Environmental Quality (DEQ) for areas of the State other than Tribal lands; obtained from EPA or an authorized Tribe (see "[Tribal](#)" [Item #3](#) below) for Tribal lands. Applicable to Section 404 and Section 402 permits under the *Clean Water Act* and to Section 9 and Section 10 permits under the *Rivers and Harbors Act of 1899*;
 - *Rivers and Harbors Act of 1899*, Section 9 permit, obtained from the US Coast Guard (USCG), for construction of bridges or causeways over navigable waters of the United States; and

- *Rivers and Harbors Act of 1899*, Section 10 permit, obtained from the COE, for structures or work (other than bridges or causeways) affecting navigable waters of the United States.
2. State. The following State permits, notifications and/or authorizations may apply:
- *Montana Stream Protection Act*, SPA 124 Notification, submitted to Montana Department of Fish, Wildlife and Parks (FWP), for projects that may affect any streams or tributaries in Montana;
 - *Montana Water Quality Act*, 318 Authorization, obtained from DEQ by the project contractor, for turbidity resulting from stream-related construction activities or stream enhancement projects;
 - *Montana Water Quality Act*, Montana Pollutant Discharge Elimination System (MPDES) permits including the following:
 - + General Permit for Storm Water Discharges Associated with Construction Activity - obtained from DEQ by the project contractor (MDT is not a co-permittee), for any point source discharge of wastewater into state waters, including storm water discharges associated with construction that disturbs one acre (0.4 ha) or more of land area;
 - + Construction Dewatering General Permit – obtained from DEQ by the project contractor (MDT is not a co-permittee) for discharge of wastewater effluent to state waters from dewatering of groundwater and/or surface water from construction sites, well pump tests and/or well development; and
 - + General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer System (MS4) – obtained from DEQ by MDT for MS4s associated with highways under MDT jurisdiction within urbanized areas subject to the MPDES MS4 permit requirements.
 - *Montana Water Use Act*, Water Rights, obtained from the Montana Department of Natural Resources and Conservation (DNRC), by MDT for new or additional water developments (e.g., on-site wetland mitigation) or by the project contractor for use of water for dust control or other construction-related purposes;
 - Floodplain Permit, obtained from DNRC or Local Floodplain Administrators (see “Local” discussion below). The Hydraulics Section in the MDT Highways Bureau obtains the permit for construction within areas designated as 100-year floodplains by the Federal Emergency Management Agency;
 - Montana Land-Use License or Easement on Navigable Waters, obtained from DNRC by the MDT Right-of-Way Bureau for the construction, placement or

modification of a structure or improvements in, over, below or above a navigable stream;

- *Clean Air Act* of Montana, Montana Air Quality Permit, obtained from DEQ by the project contractor, if needed, for operation of gravel crushers and screens, concrete batch plants, generators, asphalt plants, etc.;
- *Opencut Mining Act* Permit, obtained from DEQ by the project contractor for opencut mining of bentonite, clay, scoria, soil materials, peat, sand or gravel. An operator may not conduct opencut mining operations that result in the removal of a total of 10,000 cubic yards or more of materials and overburden until DEQ has issued a permit to the operator. An operator holding an active opencut mining permit for at least one site can strip or excavate up to 5,000 cubic yards of soil, overburden and mine material from another site after submitting a "Short Form" (available on the DEQ website) to the opencut mining program. The total area from which these materials are stripped or excavated may not exceed 5 acres. DEQ may require an additional bond as a condition for conducting this type of opencut operation; and
- Montana Trade Waste Open Burning Permit, obtained from DEQ by the project contractor for open burning of any solid, liquid or gaseous material resulting from the construction or operation of any business, trade, industry or demolition project. These permits may be issued for wood or wood byproduct trade wastes generated by any business, industry, trade or demolition project.

3. Tribal. The following Tribal permits may apply:

- Aquatic Lands Protection Ordinance 90-A, ALPO permit, obtained from the Blackfoot Nation's Water Resources Department, for construction or fill projects that occur in wetlands, riparian areas and streams on the Blackfoot Indian Reservation;
- Aquatic Lands Conservation Ordinance 87-A, ALCO permit, obtained from the Confederated Salish and Kootenai Tribe's (CSKT) Shoreline Protection Office, for any proposed work in, over or near any stream, river, lake or wetland on the Flathead Indian Reservation;
- CSKT Tribal Ordinance 64-A permit, obtained from the CSKT Shoreline Protection Office for work affecting Flathead Lake, lakeshore property or navigable waters within the exterior boundaries of the Flathead Reservation;
- *Clean Water Act*, Section 401 water quality certification, obtained from the Confederated Salish and Kootenai, Fort Peck or Northern Cheyenne Tribe for *Clean Water Act* Section 404 permits involving work in waters of the United States, including wetlands, on lands controlled by those Tribes;

- 101D permit, obtained from the Blackfoot Tribe's Water Resources Department, for withdrawal or diversion of surface or groundwater during implementation of construction activities; and
 - Special Use Permits, obtained from affected Tribes, for modification of irrigation canal crossings on Tribal lands and Plan of Operation Approvals, obtained from affected Tribes, for development of materials sources on Tribal lands.
4. Local. The following local permits may apply:
- Floodplain Permit, obtained from a Local Floodplain Administrator, where applicable, by the MDT Hydraulics Section for construction within areas designated as 100-year floodplains by FEMA; and
 - Burn Permit, obtained from local jurisdiction, where applicable, for disposal of construction debris by burning. (Note: This permit is in addition to the open burning permit required by DEQ.)

29.1.2 Permitting Roles and Responsibilities

This Chapter provides guidance and procedures for evaluating the need for the various types of permits on proposed projects and for documenting the findings. The findings include permits required, basis for applicability of the permit requirements and results of coordination with regulatory and resource agencies regarding permits needed and proposed mitigation for adverse effects of activities requiring permits.

Typically MDT prefers to permit permanent impacts separately from impacts associated with temporary facilities. In general, temporary facilities permit applications are prepared by the Contractor, reviewed by the District Environmental Engineering Specialist, and signed (as the landowner), submitted, and coordinated with the resource agencies by the Engineering Section Supervisor (ESS). [Figure 29-1](#) provides a table that indicates the party with primary responsibility for key types of permits MDT projects may require. As shown in [Figure 29-1](#), the DBs and PDEs are primarily responsible for permitting permanent facilities. The DEESs are primarily responsible for assisting the EPMs and contractors in permitting construction activities, watching timelines of permits and ensuring compliance during construction.

	CWA 404 Permit	CWA 402 Dewatering Permit	Tribal Permit	SPA 124 Notification	404 Compliance Certification Signatory*
Preconstruction (Permanent Facilities)	PDE	Contractor	PDE	DB	District Construction Engineer
Core Drill	PDE	PDE	PDE	DB	Core Drill Section Supervisor
Construction (Temporary Facilities)	DEES	Contractor	DEES/PDE	DEES	Contractor
Routine Maintenance	DEES	DEES	DEES	DB	District Maintenance Chief or Superintendent
Contracted Maintenance	PDE	Contractor	PDE	DB	District Maintenance Chief or Superintendent
Interagency Permit Coordination	ESS	ESS	ESS	RSS	N/A
Design Build (Permanent & Temporary Facilities)	PDE	Contractor	PDE	DB	District Construction Engineer

* Note: The RSS signs Compliance Certification for projects with post-project wetland monitoring requirements.

PDE = District Project Development Engineer
 DB = District Biologist
 DEES = District Environmental Engineering Specialist
 ESS = Engineering Section Supervisor
 RSS = Resources Section Supervisor

Figure 29-1 — PRIMARY RESPONSIBLE PARTY

29.2 LAWS, REGULATIONS AND GUIDANCE

29.2.1 33 USC 1344 “Permits for Dredged or Fill Material”

This Part of the *United States Code* (USC) codifies Section 404 of the *Clean Water Act* and authorizes the COE and EPA to administer a program for permitting discharges of dredged or fill material into navigable waters of the United States. The primary COE regulations for implementing Section 404 are in Title 33 of the *Code of Federal Regulations* (CFR), Parts 320-332. The primary EPA regulations for implementing Section 404 are in 40 CFR 230-231. 40 CFR 230 contains “Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, Subpart B – Compliance with the Guidelines.” Complete a 404(b)(1) analysis for all Individual Section 404 permits.

The COE and EPA implementing regulations and 33 CFR 328 define the term “waters of the United States” to mean:

- all waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
- all interstate waters including interstate wetlands;
- all other waters (e.g., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds), the use, degradation or destruction of which could affect interstate or foreign commerce including any waters:
 - + that are or could be used by interstate or foreign travelers for recreational or other purposes,
 - + from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or
 - + that are used or could be used for industrial purpose by industries in interstate commerce;
- all impoundments of waters otherwise defined as waters of the United States under this definition;
- tributaries of waters identified in the first four bullets of this definition;
- the territorial seas; and
- wetlands adjacent to waters (other than waters that are themselves wetlands) identified in this definition.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other Federal agency, for the purposes of the *Clean Water Act*, the final authority regarding *Clean Water Act* jurisdiction remains with the EPA.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of *Clean Water Act* (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

The extent of COE jurisdiction over waters of the United States is influenced by court decisions. These include the Supreme Court decision in the case of Solid Waste Agency of Northern Cook County (SWANCC) vs. US Army Corps of Engineers, et al and the Supreme Court decision in the consolidated cases of Rapanos vs. United State and Carabel vs. United States (referred to as “Rapanos”). They also include the Ninth Circuit Court decision in the case of Headwaters Inc. vs. Talent Irrigation District. The SWANCC decision negated the COE interpretation that use of isolated, non-navigable, intrastate waters by migratory birds was sufficient basis for asserting COE jurisdiction over those waters. The Rapanos decision affirmed COE jurisdiction over the following classes of waters:

- traditionally navigable waters, including all rivers and other waters that are large enough to be used by boats that transport commerce and any wetlands adjacent to such waters;
- non-navigable tributaries that are relatively permanent and wetlands that are physically connected to these tributaries; and
- other tributaries and adjacent wetlands that have certain characteristics that significantly affect traditionally navigable waters, based on case-by-case determinations.

The Talent decision determined that irrigation canals qualify as waters of the United States subject to *Clean Water Act* jurisdiction.

See the COE website for additional information.

29.2.2 33 USC 1342 “National Pollutant Discharge Elimination System”

This Statute codifies Section 402 of the *Clean Water Act* and authorizes EPA to administer a program for permitting discharges of pollutants subject to effluent limitations and conditions as EPA determines are necessary to meet the objectives for water pollution prevention and control. The primary EPA regulations for implementing Section 402 are in 40 CFR 122-125.

29.2.3 33 USC 1341 “Certification”

This Statute codifies Section 401 of the *Clean Water Act*. It establishes the requirement for providing certification that an activity involving a discharge into the waters of the United States will comply with applicable effluent limitations and water quality standards. The applicant for a Federal license or permit to conduct the activity must obtain the certification from the State in which the discharge originates or will originate, or from an authorized Indian Tribe on whose land the discharge originates or will originate. The primary EPA regulations for implementing Section 401 are in 40 CFR 121.

29.2.4 33 USC 401 “Construction of Bridges, Causeways, Dams or Dikes Generally; Exceptions”

This Statute codifies Section 9 of the *Rivers and Harbors Act of 1899* and establishes the authority for the requirement to obtain a permit from the USCG for construction of bridges or causeways over navigable waters of the United States. The primary USCG regulations for implementing Section 9 are in 33 CFR 114-115.

29.2.5 33 USC 403 “Obstruction of Navigable Waters Generally; Wharves; Piers, etc.; Excavations and Filling In”

This Statute codifies Section 10 of the *Rivers and Harbors Act of 1899* and establishes the authority for the requirement to obtain a permit from the COE for structures or work, other than bridges or causeways, affecting navigable waters of the United States. The primary COE regulations for implementing Section 10 for structures or work affecting navigable waters are in 33 CFR 322.

33 CFR 329.4 provides the following general definition of the term “navigable waters of the United States”:

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability applies laterally over the entire surface of the water body and is not extinguished by later actions or events, which impede or destroy navigable capacity.

See 33 CFR 329.4 for further clarification regarding the application of the general definition. Each COE district maintains a listing of the navigable waters within its area of jurisdiction.

The Omaha COE District lists the following Section 10 navigable waters in Montana:

- Kootenai River from the International Border between the United States and Canada downstream to Jennings Rapids near Jennings, Montana;
- Missouri River from its Headwaters near Three Forks, Montana downstream to the Iowa/Missouri state line on its eastern bank and the Nebraska/Kansas state line on its western bank; and
- Yellowstone River from Emigrant, Montana downstream to its confluence with the Missouri River in North Dakota.

The Seattle COE District lists no Section 10 navigable waters for Montana.

The “Joint Application for Proposed Work in Montana’s Streams, Wetlands, Floodplains and Other Water Bodies” is used to apply for Section 10 permits for activities in Montana affecting Section 10 navigable waters.

33 CFR 322.3 clarifies that, “a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the

waterbody.” As such, work does not need to occur within the waterbody itself to trigger the need for a Section 10 permit.

29.2.6 Aquatic Lands Protection Ordinance 90-A

This Ordinance, enacted by the Blackfeet Nation, requires a permit from the Blackfeet Nation for construction or fill projects that occur in wetlands, riparian areas and streams on the Blackfeet Indian Reservation.

29.2.7 Aquatic Lands Conservation Ordinance 87-A

This Ordinance, enacted by the Confederated Salish and Kootenai Tribe (CSKT), requires a permit from the CSKT for any proposed work in, over or near any stream, river, lake or wetland on the Flathead Indian Reservation.

29.2.8 CSKT Tribal Ordinance 64-A

This Ordinance authorizes the adoption of regulations regarding the issuance or denial of permits for work in navigable waters within the Tribe’s jurisdiction, including work done on the bed and banks below highwater mark of all navigable waters within the exterior boundaries of the Flathead Reservation. The adopted regulations for implementing Ordinance 64-A are referred to as “Confederated Salish and Kootenai Tribes Shoreline Protection Regulations.”

29.2.9 MCA 87-5-501 through 509 “Stream Protection”

These Parts of the *Montana Code Annotated* (MCA) establish the authority for FWP to administer the requirement for submitting SPA 124 Notifications for projects that may affect any streams or tributaries in Montana.

29.2.10 MCA 75-5-103(33) “State Waters” Definition

This Montana Statute provides that “State waters” means a body of water, irrigation system or drainage system, either surface or underground. It also provides that the term does not apply to:

- ponds or lagoons used solely for treating, transporting or impounding pollutants; or
- irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

29.2.11 MCA 75-5-318 “Short-Term Water Quality Standards for Turbidity”

This Montana Statute establishes the authority for DEQ to issue 318 Authorizations for turbidity resulting from stream-related construction activities or stream enhancement projects.

29.2.12 MCA 75-5-401 through 410 “Permits”

These Montana Statutes establish the authority for DEQ to administer the MPDES permit programs. Implementing rules for the MPDES programs include the following:

- ARM 17.30.1101-1117 “Storm Water Discharges,”
- ARM 17.30.1201-1209 “Montana Pollutant Discharge Elimination System (MPDES) Standards,” and
- ARM 17.30.1301-1387 “Montana Pollutant Discharge Elimination System (MPDES) Permits.”

29.2.13 MCA 85-1-101 et seq. “Water Resources”

These Montana Statutes establish the authority for DNRC to administer water rights permitting programs.

29.2.14 MCA 76-5-101 et seq. “Flood Plain and Floodway Management”

These Montana Statutes establish the authority for DNRC or authorized local floodplain administrators, to administer a permitting program for construction within areas designated as 100-year floodplains by the Federal Emergency Management Agency. Implementing rules for the floodplain permitting program are provided in ARM 36.15.101, et seq.

29.2.15 MCA 70-16-201 “Owner of Land Bounded By Water”

This Montana Statutes establishes the basis for DNRC to issue a license or easement for the construction, placement or modification of a structure or improvements in, over, below or above a navigable stream.

29.2.16 MCA 75-2-201 et seq. “Standards, Permits and Variances”

These Montana Statutes establish the authority for DEQ to administer an air quality permitting program. Implementing rules for the air quality permitting program are included within ARM 17.8.101, et seq. ARM 17.8.601 through 615 addresses requirements for “Open Burning” and related permitting (e.g., for open burning of trade waste). ARM 17.8.701 through 17.8.772 addresses requirements for permitting of stationary/portable sources (e.g. for gravel crushers/screens, concrete batch plants, generators or asphalt plants).

29.2.17 FHWA Technical Advisory T 6640.8A

The Technical Advisory, dated October 30, 1987, includes guidance for addressing permits in environmental documents. The Advisory provides the following guidance:

1. Section 402 Permit. If a facility (e.g., safety rest area) is proposed and has a point source discharge, a Section 402 permit is required for the point source discharge (40 CFR 122). The draft environmental documentation should:
 - discuss potential adverse impacts resulting from the proposed facility,
 - identify mitigation measures, and
 - identify the need for a Section 402 permit and Section 401 water quality certification.

2. Section 404/Section 10 Permit. For proposed actions requiring a Section 404 or Section 10 permit from the Corps of Engineers (COE), the draft environmental documentation should:
 - identify, by alternative, the general location of each dredge and fill activity;
 - discuss the potential adverse impacts, identify proposed mitigation measures, if not addressed elsewhere in the environmental documentation; and
 - include evidence of coordination with the COE and appropriate Federal, State and local resource agencies, and State and local water quality agencies.

Where the preferred alternative requires an individual Section 404 or Section 10 permit, the final environmental documentation should identify the following for each permit activity:

- the approximate quantities of dredge or fill material,
 - general construction grades, and
 - proposed mitigation measures.
3. Section 9 Permits. For proposed actions requiring Section 9 permits from the US Coast Guard (USCG), the draft environmental documentation should:
 - identify, by alternative, the location of the permit activity;
 - potential impacts to navigation and the environment, if not addressed elsewhere in the environmental documentation);
 - proposed mitigation measures and evidence of coordination with the USCG.

Where the preferred alternative requires a Section 9 permit, the final environmental documentation should:

- identify for each permit activity the proposed horizontal and vertical navigational clearances, and
 - include an exhibit showing the various dimensions.
4. Other Agencies. For all permit activities, include evidence that every reasonable effort has been made to resolve the issues raised by other agencies regarding the permit

activities in the final environmental documentation. If important issues remain unresolved, the final environmental documentation must:

- identify those issues,
- the positions of the respective agencies on the issues and the consultations, and
- other efforts made to resolve them.

29.3 PROCEDURES

29.3.1 Information Gathering

The Preliminary Field Review (PFR) is the initial step in evaluating the need for permits for a proposed project. The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) and District Biologist (DB) within the MDT Environmental Services Bureau (ESB), to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE and DB participate in the PFR to make a preliminary evaluation of available information on the project scope and the potential for the project to affect resources or involve activities that would trigger the need for permits. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including permitting issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief.

After the PFR, the PDE and DB coordinate with resource agencies and review available environmental databases to gather additional information in the project area. The DB gathers information for identifying streams or tributaries that would be subject to the SPA 124 Notification requirements and delineates wetlands along the project corridor. The PDE gathers information for identifying jurisdictional status of water bodies, wetlands and riparian areas (including those that would meet the definition of “waters of the United States” and/or the definition of “navigable waters”), Tribal lands, and 100-year floodplains. The Erosion Control/Construction Engineer determines the location and extent of areas covered by the MPDES Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (MS4) and projects likely to require coverage under the MPDES or NPDES General Permit for Storm Water Discharges Associated with Construction Activity. The PDE coordinates with staff in the ESB Resources Section to obtain information on wetland delineations, anticipated unavoidable wetland impacts, proposed mitigation and need for water rights.

The PDE coordinates with the DT to gather additional information on the project scope to determine if the project is likely to involve actions and permit requirements.

Actions for which MDT is the permittee, if applicable:

- discharge of dredged or fill material into waters of the US (Individual or Nationwide Section 404 Permit, Section 401 water quality certification);
- construction disturbing one acre (0.4 ha) or more of land area or having a high potential for storm water discharge (e.g., some bridge projects) (MPDES/ NPDES General Permit for Storm Water Discharges Associated with Construction Activity);
- construction in an area covered by the MPDES Permit for Storm Water Discharges Associated with Small MS4s (MPDES MS4 permit);

- construction of a bridge or causeway over a navigable water of the US (Section 9 Permit, Section 401 water quality certification, Montana Land-Use License or Easement on Navigable Waters);
- structures or other work (other than a bridge or causeway) affecting a navigable water of the US (Section 10 Permit, Section 401 water quality certification, Montana Land-Use License or Easement on Navigable Waters);
- construction or fill in wetlands, riparian areas or streams on the Blackfeet Indian Reservation (ALPO Permit);
- work in, over or near any stream, river, lake or wetland on the Flathead Indian Reservation (ALPO Permit or CSKT Tribal Ordinance 64-A Permit); and/or
- construction in a 100-year floodplain (Floodplain Permit).

Actions for which the Contractor is the permittee, if applicable:

- construction dewatering activities (MPDES General Permit for Construction Dewatering);
- construction involving discharges that DEQ determines are contributing to a violation of a water quality standard or are significant contributors of pollutants to surface waters (MPDES General Permit for Discharges Associated with Construction Activity or NPDES construction permit and Section 401 water quality certification for construction disturbing one acre (0.4 ha) or more of land area on Tribal lands);
- withdrawal or diversion of surface or groundwater on the Blackfeet Indian Reservation during construction (101D Permit);
- development of material sources (Tribal Plan of Operation Approval) or modification of irrigation canal crossings on Tribal lands (Tribal Special Use Permit);
- need for obtaining water rights for use of water for dust control or other construction-related purposes (Montana Water Rights Permit);
- development of material sources (Tribal Plan of Operation Approval) or modification of irrigation canal crossings on Tribal lands (Tribal Special Use Permit);
- need for obtaining water rights for use of water for dust control or other construction-related purposes (Montana Water Right Permit); in-stream construction (318 Authorization);
- operation of gravel crushers/screens, concrete batch plants, generators or asphalt plants or facilities for crushing rock or producing mix for asphalt pavement (Montana Air Quality Permit from DEQ or Missoula County); and/or
- burning of construction debris (Montana Trade Waste Open Burning Permit from DEQ and/or local jurisdiction Burn Permit).

29.3.2 Analysis and Findings

The PDE coordinates with the DB and appropriate regulatory and resource agencies to evaluate the information gathered and make a preliminary determination of those permit requirements likely to apply to the proposed project.

The PDE ensures the results of the evaluation of permits applicable to the proposed project are incorporated in the project's environmental documentation (see [Chapters 11 "Preparing Environmental Documentation,"](#) [12 "Categorical Exclusion,"](#) [13 "Environmental Assessment/FONSI"](#) and [14 "Environmental Impact Statement/ROD"](#)).

29.3.3 Mitigation and Commitments

See [Chapter 48 "Tracking Commitments and Permit Obligations"](#) for a discussion of follow-through on mitigation and commitments associated with permits required for a project.

