



Guidance

Reasonable Assurances for Water Resources Activities

Per Section 8.4.2 of ENV’s Environmental Guide Volume 1 and the introduction of ENV’s Environmental Guide Volume 2, district environmental staff may adjust Activity milestones in ECOS for some water resources activities by selecting a different value from the drop-down menu on the Assignment Details component of the Activity. If district environmental staff changes a default milestone in ECOS, they must provide an explanation in the “Comments” field of the Activity explaining why the default milestone was changed, and detailing the plan for accomplishing completion of the Activity in the future in order to demonstrate reasonable assurance (RA) that the Activity (including any related Review or Coordination) will be completed prior to the stage of project development at which the Activity must be completed.

For water resources activities, the following activities have a default milestone of Prior to LOA (Letter of Authority) as it is expected and preferred that they be completed before ENV clears the project for letting. However, in certain circumstances, district environmental staff may choose to proceed to letting prior to completing these activities, so long as the district has a plan for ensuring that the activity will be completed prior to the start of construction, changes the milestone in ECOS to “Prior to Construction,” and documents RAs in the ECOS file at the time of the change (Documentation of RAs only goes in the Activity, not the Review or Coordination). **The RA must be present in the ECOS record before the project may be LOA-cleared by ENV.** See ENV’s Environmental Guide Volume 2, “Obtain Letter of Authority (LOA) Clearance” Activity Instructions for more information.

| Activity/Review/Coordination | Default Milestone |
|--|------------------------------------|
| Water - Obtain Section 404/10 Permit | Prior to Letter of Authority (LOA) |
| Water - Review Obtain Section 404/10 Permit | Prior to LOA |
| Water - Coordinate Section 404/10 Permit | Prior to LOA |
| Water - Obtain Section 9 Bridge Permit | Prior to LOA |
| Water - Review Section 9 Bridge Permit | Prior to LOA |
| Water - Coordinate Section 9 Bridge Permit | Prior to LOA |
| Water - Obtain International Boundary and Water Commission (IBWC) Approval | Prior to LOA |
| Water - Review International Boundary and Water Commission (IBWC) Approval | Prior to LOA |
| Water - Coordinate International Boundary and Water Commission (IBWC) Approval | Prior to LOA |
| Water - Perform Texas Commission on Environmental Quality (TCEQ) Edwards Aquifer Rules Analysis | Prior to LOA |
| Water - Review Texas Commission on Environmental Quality (TCEQ) Edwards Aquifer Rules Analysis | Prior to LOA |
| Water - Coordinate Texas Commission on Environmental Quality (TCEQ) Edwards Aquifer Rules Approval | Prior to LOA |

The RA must address the status and plan to complete any Activity with a changed milestone. The information provided must clearly demonstrate that it will be possible to obtain all necessary permits and authorizations prior to construction. Further, the RA must demonstrate that district environmental staff have taken all possible steps to inform bidders and contractors that work may not begin on the project or portions of the project until all permits and authorizations have been received.

Following are step-by-step instructions to document RAs in ECOS.

Step 1: Confirm the ECOS Activities/Coordinations/Reviews where the milestone is changing are created and open (i.e., not yet Finalized).



Step 2: In the Assignment Details component of the Activity, select “Prior to Construction” from the drop-down menu and save the change. It will be necessary to also change the milestone for the Review and/or Coordination to “Prior to Construction.”

Step 3: Confirm the milestones for the Activities (and any Reviews and/or Coordinations) are changed to “Prior to Construction” as appropriate.

Step 4: Confirm there is an RA statement inside each Activity where the milestone was changed (it is not necessary to also include an RA statement in any associated Review and/or Coordination). The RA statement should appear in the “Comments” field or the “Comments” field should refer to the file name of the document in the ECOS file where the RA statement for the Activity can be located.

The RA statement must provide the following information:

- Details on the status of obtaining of the permit or authorization
 - Type of permit or authorization anticipated
 - Date of submission or anticipated date of submission to the approving agency
 - Date of receipt or anticipated date of receipt from approving agency
- Efforts the district has taken to notify bidders and contractors that the permit or authorization is not yet obtained, and no work is allowed in designated areas until the permit or authorization has been received.
 - What commitments are made regarding the permit/authorization
 - Where this information can be found in the bid packet, the plans, specifications and estimate (PS&E) information, general notes, and other documents

Here are some example RA statements that can be modified to accurately reflect what applies to each project or situation (fill in the [] with the appropriate project details). Note that there may be other items not listed here to demonstrate RAs.

OBTAIN SECTION 404/10 PERMIT RA:

- Work in [] (waterbody(ies)) must be authorized by the United States Army Corps of Engineers (USACE) under a [] (permit type) e.g., Nationwide Permit (NWP) 14 with a Pre-Construction Notification (PCN).
- District submitted the Permit Application/Pre-Construction Notification on [] (date) to the USACE [] (USACE district).
- USACE [] (USACE district) acknowledged receipt on [] (date) and as of [] (date) indicate they are currently reviewing it. **-or-** The USACE federally complete date is [] (date), but USACE indicated a decision would not be completed by LOA [] (date).
- District has included in the PS&E information / contractor bid packet the following:
 - General Notes indicate – [] (e.g., ITEM 100 Prep ROW - No construction equipment shall be allowed within 10 feet of any high-water mark next to wetlands or streams or as Directed by the Engineer.)
 - ITEM 506 Temporary Erosion, Sedimentation & Environmental Controls: The contractor will not impact waters and wetlands in the following locations until USACE permitting has been obtained for XXX Creek STA. 1081+86.39 to 1082+12.72.

- Until permit is obtained, the Contractor will delineate and prohibit access to these areas using orange construction fencing. This work is considered subsidiary to Item 506.
- PS&E EPIC Sheet indicates – _____ (e.g., Work would be authorized by the United States Army Corps of Engineers (USACE) permit. It is anticipated to be a Nationwide Permit (NWP) with a Pre-Construction Notification (PCN) SWG-2021-00276-TXDOT for xxx creek. The project specific permit issued by the USACE is therefore not included in the plan set, but General Notes xxx and layout sheets xxx provide more details.)
- P&P layout sheet nos. _____ indicate – _____ (e.g., orange fencing restricting work in jurisdictional waters until permit is obtained) or layout sheet nos. 456-457 denoting design/construction work allowed to be performed prior to the permit vs work allowed after the permit is obtained)
- Construction schedule indicates – _____ (e.g., project letting is early Aug, contractor Work Begin Date and Pre Construction Meeting anticipated in early Sept, contractor to begin on north end of project for a work period of 30 working days at which time work could begin in jurisdictional area if permit has been obtained).
- District will discuss with contractor during preconstruction meeting permit status/conditions
- District will ensure contractor does not begin work in jurisdictional areas without having obtained the necessary permit approval

PERFORM TCEQ EDWARDS AQUIFER RULES ANALYSIS RA:

- The project requires a TCEQ-approved _____ (permit type, e.g. Water Pollution Abatement Plan (WPAP)) before ground disturbing activities may commence.
- _____ (District name or Code) plans on submitting the _____ (permit type) to TCEQ on _____ (date).
- TCEQ typically approves _____ (permit type) in approximately _____ (days weeks, etc. based on past experience). The duration depends on TCEQ workload, the quality and complexity of the _____ (permit type), and the project schedule. The _____ (permit type) for this project has a _____ (low, moderate, high) level of complexity because _____ (provide reasoning e.g., since there is only one sensitive feature, a water well that will be avoided, and there is only one permanent BMP to conduct a design review upon. Based on this information, _____ (District name or Code) anticipates that TCEQ will approve the _____ (permit type) by _____ (date).
- The project is scheduled for statewide construction letting on _____ (date) and a contract should be awarded by the Texas Transportation Commission at the _____ (date) meeting.
- TxDOT's design project manager has developed a detailed project schedule and anticipates issuing the contractor a Notice to Proceed on _____ (date).
- The EPIC plan sheet #511 states "The contractor may not begin ground disturbing activities until the TCEQ approves the WPAP..."
- _____ (District name or Code) will coordinate with the contractor regarding the construction start date and the status of the _____ (permit type) and ensure that no ground disturbing activities are conducted before the TCEQ approves the _____ (permit type).

OBTAIN SECTION 9 BRIDGE PERMIT RA:

- The project requires a bridge permit from USCG.
- As of _____ (date), the USCG bridge permit application is not complete but is currently _____ (status e.g., in review, being developed, etc.). The permit is anticipated to be submitted on _____ (date).
- The typical USCG review timeframe is 180 days from the date the USCG determines the application is “federally complete”. Provide any other details to support the completeness of the application, e.g., The NWP 14 authorization has been secured, which should allow this submission to be “federally complete”. The Coastal Zone Management coordination with the General Land Office was completed as of April 9, 2021 and the area office has modified the design drawings to meet USCG review requirements.
- Ahead of the complete USCG bridge permit application, _____ (District name or Code) District staff met with the USCG for a pre-application coordination meeting on _____ (date). Indicate what was provided and decided at the meeting (e.g., A preliminary navigational clearance determination request was recommended to validate the design need to reduce the maximum vertical clearance of the proposed new bridge structure from 60.00 feet to 59.27 feet. In support of the request, a 3-day navigational characterization study was performed by HOU District to document that the change in vertical clearance would not adversely impact both current and future uses of the subject waterway. The USCG approved the determination request on April 9, 2020.
- Another recommendation made was navigation-focused public outreach ahead of the USCG’s public noticing effort. In the summer of 2020, HOU District notified and provided critical project information and timeline to city officials and impacted parcel owners and businesses. USCG pre-application coordination and recommendations were undertaken with the intent to introduce the proposed bridge replacement to the permitting agency and expedite their bridge permit application review time.
- The _____ (District name or Code) has included a 180-day construction delay clause in the construction plans. Given a/n _____ (date) letting, and an approved 180-day construction delay clause built into the construction plans, earthmoving activities will not begin until _____ (date) at the earliest, which provides USCG adequate time to render a decision.
- _____ (District name or Code) has communicated the permit status and conditions with the _____ (name) Area Office engineers.
- _____ (District name or Code) District has included the following in the PS&E:
 - General construction notes indicate: ITEM 7 Legal Relations and Responsibilities – Do not initiate activities in a Project Specific Location (PSL), associated with a U.S. Army Corps of Engineers (USACE) permit area, that have not been previously evaluated by the USACE as part of the permit review of this project. Such activities include those pertaining to, but are not limited to, haul roads, equipment staging areas, borrow and disposal sites. Associated defined here means materials are delivered to or from the PSL. The permit area includes the waters of the U.S. or associated wetlands affected by activities associated with this project. Special restrictions may be required for such work. Assume responsibility for consultations with the USACE regarding activities, including PSLs that have not been previously evaluated by the USACE. Provide the Department with a copy of consultations or approvals from the USACE before initiating activities.



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- PS&E EPIC Sheet indicate: The work would be authorized by a USACE NWP 14 with a PCN, for impacts to wetlands outside of Old Brazos River. Impacts within and/or over Old Brazos River will be authorized under the bridge permit issued by the USCG. No work is to occur in WOTUS without the permits. The Contractor is responsible for supplying sediment control fencing for avoiding wetland impacts not authorized by the permit.
- No work is to occur over/in the _____ (waterbody) without the USCG bridge permit.
- The project will be staged as follows:
 - Begin Construction Date is _____ (date)
 - Begin bridge substructures date is approximately _____ (date)
- _____ (District name or Code) will ensure contractor does not begin work in/over _____ (waterbody) without having obtained the necessary permit approval from the USCG.



Appendix A: Revision History

The following table shows the revision history for this guidance document.

| Revision History | |
|-------------------------------|--------------------------------------|
| Effective Date Month, Year | Reason for and Description of Change |
| June 2022 | Version 1 was released. |