



Form Surface Water Analysis

Project Name: **FM 1375 from FM 149 to Walker County Line**

CSJ(s): **1402-03-013**

County(ies): **Montgomery**

Date Analysis Completed: **December 18, 2023**

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The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

I. Section 402 of the Clean Water Act

No project-specific analysis is required as part of the environmental review process under Section 402 of the Clean Water Act for the reasons provided below:

Since TPDES Construction General Permit (CGP) authorization and compliance (and the associated documentation) occur outside of the environmental clearance process, compliance is ensured by the policies and procedures that govern the design and construction phases of the project. The Project Development Process Manual and the Plans, Specifications, and Estimates (PS&E) Preparation Manual require a storm water pollution prevention plan (SWP3) be included in the plans of all projects that disturb one or more acres. The Construction Contract Administration Manual requires that the appropriate CGP authorization documents (notice of intent or site notice) be completed, posted, and submitted, when required by the CGP, to Texas Commission on Environmental Quality (TCEQ) and the municipal separate storm sewer system (MS4) operator. It also requires that projects be inspected to ensure compliance with the CGP.

The PS&E Preparation Manual requires that all projects include Standard Specification Item 506 (Temporary Erosion, Sedimentation, and Environmental Controls), and the "Required Specification Checklists" require the current version of Special Provision 506 on all projects that need authorization under the CGP. These documents require the project contractor to comply with the CGP and SWP3, and to complete the appropriate authorization documents.

For more information regarding Section 402 of the Clean Water Act, see **ENV's Water Resources Handbook**.

II. Section 404 of the Clean Water Act

Select the appropriate statement below:

- A. Section 404 compliance not required** - No impacts to jurisdictional waters are anticipated.



- B. Section 404 compliance under a non-reporting NWP** - This project will use only a non-reporting nationwide permit under Section 404 and no delineation or impacts table is needed to verify. Indicate which non-reporting NWP will be used below:

Non-reporting NWP no(s): **<enter non-reporting NWP no(s)>**

- C. Any other situation** – Check this box in any other situation, such as:
- It is not possible to determine prior to environmental clearance whether Section 404 compliance is required or, if so, how Section 404 compliance will be achieved, because of a lack of right-of-entry and/or a lack of sufficient design¹.
 - A delineation or impacts table is needed to verify if Section 404 compliance is required and, if so, how Section 404 compliance will be achieved.
 - The project will require a general permit (i.e., NWP with PCN or regional general permit), or individual permit (i.e., individual standard permit or letter of permission).

If this box is checked, then create the “Obtain Section 404/10 Permit” Activity. District environmental staff will confirm whether Section 404 compliance is required and, if so, how Section 404 compliance is achieved, in the “Obtain Section 404/10 Permit” Activity (default milestone is “Prior to LOA”).

For more information regarding Section 404 of the Clean Water Act, see **ENV’s Water Resources Handbook**.

III. Section 14 of the Rivers and Harbors Act (33 USC 408)

No project-specific analysis is required as part of the environmental review process under Section 14 of the Rivers and Harbors Act (33 USC 408) (“Section 408”) for the reasons provided below:

Any project that involves alterations to, or will temporarily or permanently occupy or use, a USACE federally authorized civil works project (e.g., sea walls, bulkheads, reservoirs, levees, wharfs, or other federal civil works projects, or associated federal land (fee simple) or easements) will require USACE authorization under Section 408 prior to construction of the project. Obtaining any required authorization under Section 408 from the USACE is generally handled by hydraulic and/or design engineers. For any project that requires authorization under both Section 404 and Section 408, the Section 404 authorization cannot be issued until the Section 408 authorization is issued.

For more information regarding Section 408, see **ENV’s Water Resources Handbook**.

IV. Section 303(d) of the Clean Water Act

For a CE project, no project-specific analysis is required as part of the environmental review process under Section 303(d) of the Clean Water Act for the reasons provided below:

¹ Sufficient design means near final design, complete enough to effectively determine impacts on water features to the 1,000th of an acre (i.e., 0.001) and that will not change prior to permit authorization. Any changes will cause letting and permitting delays.



To date, TCEQ has not identified (through either a total maximum daily load (TMDL) or the review of projects under the TCEQ MOU) a need to implement control measures beyond those required by the construction general permit (CGP) on road construction projects. Therefore, compliance with the project’s CGP, along with coordination under the TCEQ MOU for certain transportation projects, collectively meets the need to address impaired waters during the environmental review process. As required by the CGP, the project and associated activities will be implemented, operated, and maintained using best management practices to control the discharge of pollutants from the project site.

For an EA or EIS project, further analysis regarding impaired waters is required under TxDOT’s MOU with TCEQ for inclusion in the body of the environmental assessment or environmental impact statement. To do this further analysis, determine whether the project is located within five linear miles (not stream miles) of, is within the watershed of, and drains to, an impaired assessment unit under Section 303(d) of the federal Clean Water Act.

For an EA or EIS project only, provide the date of the Section 303(d) list consulted: **<enter date, for EAs and EISs only>**

For an EA or EIS project only, check the appropriate box below:

- This project is not located within five linear miles (not stream miles) of, is not within the watershed of, or does not drain to, an impaired assessment unit under Section 303(d) of the federal Clean Water Act.
- This project is located within five linear miles (not stream miles) of, is within the watershed of, and drains to, an impaired assessment unit under Section 303(d) of the federal Clean Water Act.

For an EA or EIS project only, if the second box is checked, fill-in the table below for any impaired assessment units within five miles of the project and within the same watershed as the project:

Watershed	Segment name	Segment number	Assessment unit number
<enter text>	<enter text>	<enter text>	<enter text>
<enter text>	<enter text>	<enter text>	<enter text>
<enter text>	<enter text>	<enter text>	<enter text>
<enter text>	<enter text>	<enter text>	<enter text>
<enter text>	<enter text>	<enter text>	<enter text>
<enter text>	<enter text>	<enter text>	<enter text>

For more information regarding Section 303(d) of the Clean Water Act, see **ENV’s Water Resources Handbook**.

V. General Bridge Act/Section 9 of the Rivers and Harbors Act

Select the appropriate statement below:



- This project will not require a permit, bridge lighting authorization, or exemption from the United States Coast Guard under Section 9 of the Rivers and Harbors Act, which outlines the requirements for approval to construct dams, dikes, bridges, or causeways in or over a navigable waterway.
- This project will require a permit, bridge lighting authorization, or exemption from the United States Coast Guard under Section 9 of the Rivers and Harbors Act, which outlines the requirements for approval to construct dams, dikes, bridges, or causeways in or over a navigable waterway.

For more information regarding the General Bridge Act/Section 9 of the Rivers and Harbors Act, see **ENV's Water Resources Handbook**.

VI. Section 10 of the Rivers and Harbors Act

Select the appropriate statement(s) below (for some projects, it may be appropriate to select both the second and third statements):

- No structures will be constructed in or over a navigable waterway.
- This project will use a non-reporting nationwide permit under Section 10 and no delineation or impacts table is needed to verify. Indicate which non-reporting NWP will be used below:

Non-reporting NWP no(s): **<enter non-reporting NWP no(s)>**
- This project will use a reportable permit under Section 10, **or** it is not yet clear which permitting option will be used, if any, and so a delineation is needed or a delineation and impacts table are needed to make that determination.

For more information regarding Section 10 of the Rivers and Harbors Act, see **ENV's Water Resources Handbook**.

VII. Section 401 of the Clean Water Act

Select the appropriate statement below:

- A. Section 401 compliance not required** - This project will not require authorization under Section 404 of the federal Clean Water Act. Therefore, this project is not required to comply with TCEQ's Water Quality Certification Program, established under Section 401 of the Clean Water Act.
- B. Section 401 compliance under a non-reporting NWP** - This project will require only a non-reporting NWP under Section 404 that is covered by TCEQ's blanket 401 water quality certification and, therefore, will comply with Section 401 of the Clean Water Act by implementing TCEQ conditions for NWPs.



C. Any other situation – Check this box in any other situation, such as:

- It is not possible to determine prior to environmental clearance whether Section 401 compliance is required or, if so, how Section 401 compliance will be achieved, because of a lack of right-of-entry and/or a lack of sufficient design².
- A delineation or impacts table is needed to verify if Section 401 compliance is required and, if so, how Section 401 compliance will be achieved.
- The project will require a general permit (i.e., NWP with PCN or regional general permit), or individual permit (i.e., individual standard permit or letter of permission).

If this box is checked, then district environmental staff will confirm whether 401 compliance is needed and, if so, how Section 401 compliance is achieved, in the “Obtain Section 404/10 Permit” Activity (default milestone is “Prior to LOA”).

For more information regarding Section 401 of the Clean Water Act, see **ENV’s Water Resources Handbook**.

VIII. Executive Order 11990, Protection of Wetlands

Select the appropriate statement below:

- This project is not federally funded and therefore is not subject to Executive Order 11990, Protection of Wetlands.
- This project is federally funded and therefore is subject to Executive Order 11990, Protection of Wetlands, and will not involve construction in any wetlands.
- This project is federally funded and therefore is subject to Executive Order 11990, Protection of Wetlands, and will involve construction in one or more wetlands. Explanation of how the project will comply with Executive Order 11990 is provided below.

Explanation of why there is no practicable alternative to such construction:

<enter explanation, if applicable>

Explanation of how the project includes all practicable measures to minimize harm to wetlands:

<enter explanation, if applicable>

If the delineation is needed prior to selection of the appropriate checkbox above, then the delineation may occur under the “Obtain Section 404/10 Permit” Activity. Following completion of the delineation, district environmental staff will confirm whether EO 11990 compliance is needed and, if so, how EO 11990 compliance is achieved, and select the

² Sufficient design means near final design, complete enough to effectively determine impacts on water features to the 1,000th of an acre (i.e., 0.001) and that will not change prior to permit authorization. Any changes will cause letting and permitting delays.



appropriate checkbox above at that time. If the delineation will not be completed until after environmental clearance, then select the appropriate checkbox above based on the best available information known at the time of environmental clearance, as this form and the “Perform Surface Water Analysis” Activity must be completed prior to environmental clearance.

For more information regarding Executive Order 11990, Protection of Wetlands, see **ENV’s Water Resources Handbook**.

IX. Executive Order 11988, Floodplain Management

Select the appropriate statement below:

- This project is not federally funded and therefore is not subject to Executive Order 11988, Floodplain Management.
- This project is federally funded and therefore is subject to Executive Order 11988, Floodplain Management, and will not involve construction in the floodplain.
- This project is federally funded and therefore is subject to Executive Order 11988, Floodplain Management. However, the project will not involve a significant encroachment in the floodplain.

“Significant encroachment” means “a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction-or flood-related impacts:

- (1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.
- (2) A significant risk, or
- (3) A significant adverse impact on natural and beneficial flood-plain values.” 23 CFR 650.105(q)

In the above definition, “risk” means “the consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss and hazard to life during the service life of the highway.” 23 CFR 650.105(o).

- This project is federally funded and therefore is subject to Executive Order 11988, Floodplain Management, and will involve a significant encroachment in the floodplain. Explanation of how the project will comply with Executive Order 11988 is provided below.

Explanation of how the project has been designed or modified, or will be designed or modified, to minimize potential harm to or within the floodplain:³

³ EO 11988, Section 2.(a)(2).



<enter explanation, if applicable>

Reasons why the proposed action must be located in the floodplain:⁴

<enter explanation, if applicable>

Alternatives considered and why they were not practicable (i.e., capable of being done within reasonable natural, social, or economic constraints):⁵

<enter explanation, if applicable>

Statement indicating whether the action conforms to applicable State or local floodplain protection standards:⁶

The project will comply with the standards in the TxDOT Hydraulic Design Manual.

For more information regarding Executive Order 11988, Floodplain Management, see ENV’s Water Resources Handbook.

X. Drinking Water Systems

No project-specific analysis is required as part of the environmental review process for drinking water systems for the reasons provided below:

In accordance with TxDOT’s Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges (Item 103, Disposal of Wells), any drinking water wells would need to be properly removed and disposed of during construction of the project.

XI. Resources Consulted

Indicate which resources were consulted/actions were taken to make the surface water determinations recorded in this form (DO NOT ATTACH TO THIS FORM OR UPLOAD TO ECOS ANY RESOURCES CONSULTED – JUST CHECK THE APPROPRIATE BOX(ES)):

- ☑ Aerial Photography (list dates mm/yyyy): 1940, 1952, 1958, 1969, 1973, 1983, 1990, 1995, 2005, 2016
☑ Topographic Maps ☑ Floodplain Maps
☑ Site Visit ☑ USFWS NWI Maps ☑ NRCS Soil Survey
☑ NHD ☑ TCEQ Streams/Waterbodies ☑ LIDAR
☐ USACE Approved JDs ☑ USACE Section 10 waters ☐ USACE 408 data
☐ TCEQ 303(d) Impaired Waters
☐ Contacted resource agency (list agency and reason): _____
☐ Other (list): _____

4 23 CFR 650.113(a)(1).
5 23 CFR 650.105(k), 650.113(a)(2).
6 23 CFR 650.113(a)(3).