

DB Section 141.51 - Environmental Compliance

(a) Scope - This Section covers requirements applicable to environmental Work, including requirements for preparing or obtaining studies, for mitigating impacts, for obtaining permits, clearances, and approvals, and for monitoring activities. It also covers the required content of the Environmental Compliance Plan that Design-Builder is required to develop and implement.

(b) Standards; Environmental Permits, Programmatic Agreements, Orders, Opinions, Clearances, Authorizations and Studies - Design-Builder shall perform all environmental Work in accordance with the requirements of this Section 141.51.

- PDLT Notice 02 – Project Development Decision Structure
- PDLT Notice 04 – Environmental Guidance
- PDLT Notice 05 – Water Quality Mitigation
- PDLT Notice 10 – Disposal of Excess Excavation Materials

(c) Requirements

(1) Regulatory Authority Communications - All substantive contact with regulatory Authorities by Design-Builder shall be conducted by the appropriate, qualified environmental task lead or the Environmental Manager. Design-Builder shall fully review guidance material available on the regulatory Authorities' internet sites before contacting the Authorities. Design-Builder shall not contact the regulatory Authorities before Agency Acceptance of the Environmental Compliance Plan without prior approval of Agency PM.

(2) Protocols for Communicating with Regulatory Authority Liaisons - Various programmatic agreements are in place between Agency and regulatory Authorities. Agency has IGAs that establish liaison positions with the regulatory Authorities that are to be used to foster compliance with the programmatic agreements. Agency is making the liaisons available to Design-Builder for the Project if the following protocols are followed:

- Communication is conducted in a professional, respectful manner
- Discussions with any level of the regulatory Authority organization above the liaison occur only with prior authorization from Agency
- Only technically-proficient staff that are experienced with that regulatory Authority communicate with the liaisons
- Adequate review and response time is provided

(3) Regulatory Authority Contacts - Contact personnel for each of the following regulatory Authorities will be provided upon Acceptance of the Environmental Compliance Plan.

(4) Regulatory Authority Internet Sites - The following is a list of regulatory Authority internet sites which may be helpful:

- DSL: <http://www.oregon.gov/DSL/index.shtml>
- USFWS: <http://www.fws.gov/> or <http://www.fws.gov/pacific/>
- DEQ: <http://www.deq.state.or.us/>
- NMFS: <http://www.nwr.noaa.gov/>
- USACE: <http://www.nwp.usace.army.mil/home.asp>
- SHPO: <http://egov.oregon.gov/OPRD/HCD/>
- ODFW: <http://www.dfw.state.or.us/>
- DLCD: <http://www.lcd.state.or.us/>
- APHIS: <http://www.aphis.usda.gov/>
- EPA: <http://www.epa.gov/>

(5) Programmatic Agreements - The following programmatic agreements may be applicable to the Project:

- Peregrine Falcon Management Plan with ODFW
- Programmatic drilling agreement with NMFS
- Programmatic permits and agreements Agency has developed as part of the OTIA III Statewide Bridge Delivery Program, Oregon, including:
 - o Regional General Permit for ODOT Bridge Repair and Replacement, including 401 certification (US Army Corps of Engineers), July 29, 2004, Permit No. 200400035
 - o Informal Concurrence and Formal Biological Opinion and Conference & Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, OTIA III Statewide Bridge Delivery Program, Oregon (USFWS and NMFS), June 28, 2004
 - o Memorandum of Agreement with USDA Forest Service and BLM, July 2004

(6) Environmental Performance Standards - As part of the programmatic permitting and agreements, environmental performance Standards have been developed which are applicable to OTIA III Bridge projects. These programmatic permits and agreements shall be utilized and complied with, to the extent feasible, in the performance of the Work. If Design-Builder concludes that the programmatic permits and agreements are not feasible for the Project, Design-Builder shall submit documentation explaining the basis of that conclusion to Agency PM. The documentation shall address impacts to Project scope, schedule, budget and the ability to meet the OTIA III Program goals. The documentation will be included in the Environmental Compliance Plan.

(7) Studies - Agency may have conducted certain environmental studies pertaining to the Project, including:

- Environmental baseline reports (environmental baseline reports can be obtained from the OTIA III Statewide Bridge Delivery Program project library located at the following web address:
http://egov.oregon.gov/ODOT/HWY/OTIA/odotbridgesee_library.shtml)

- Archaeological survey reports (available by request only from SHPO due to confidentiality provisions)
- Rare plant survey reports (available by request only due to confidentiality provisions). Please fill in the form located at: <http://www.obdp.org/site/download/?file=/files/partner/environmental/Natural%20Resources20Confidentiality%20Acknowledgement%20Form.doc>, and submit it to Agency PM

(8) Permits - Design-Builder shall apply for and obtain all necessary environmental permits not previously obtained by Agency. Design-Builder shall prepare the design and conduct construction activities such that no action or inaction on the part of Design-Builder shall result in non-compliance with the requirements of Laws applicable to the project.

(9) Environmental Compliance Plan - Design-Builder shall prepare and implement an Environmental Compliance Plan by the date required in Subsection (13), and shall update the plan as needed, as new fieldwork is completed, and as new or modified mitigation or environmental compliance strategies are developed throughout the term of the Contract.

The Environmental Compliance Plan is part of the Quality Plan and shall be formally Accepted by Agency. New information or modified information, mitigation plans, and compliance strategies developed throughout the term of the Contract and added to the Environmental Compliance Plan shall also be formally Accepted by Agency through the submission of an updated Quality Plan. (See DB General Provisions, Section 154.) All permits, clearances, and approvals shall be incorporated into the Environmental Compliance Plan as they are issued by the regulatory Authorities, and therefore shall also become part of the Quality Plan.

The Environmental Compliance Plan shall (a) identify all applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations and their requirements; (b) identify key environmental compliance personnel roles and responsibilities; (c) identify procedures for achieving and documenting environmental compliance; (d) establish procedures for identifying and resolving non-compliance; and (e) establish procedures for emergency response. In addition, the Environmental Compliance Plan shall address the process and procedures Design-Builder's environmental team will employ to ensure 100 percent compliance with environmental permits, programmatic agreements (if using), orders, opinions, clearances and authorizations, and protection of the environment. The Environmental Compliance Plan shall also include a schedule for accomplishment of each activity. In addition to the foregoing, the Plan shall include:

- a. Environmental inspections and investigations to determine the direct and indirect effects of the Project (design elements and construction activities) on terrestrial and aquatic biological resources, cultural resources, visual and aesthetic conditions, water quality, and other issues present in the Project area.
- b. Environmental constraints maps, including location and extent of Wetlands, waterways, habitats, cultural resources and other sensitive environmental resources.

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- c.** Strategy for coordinating with Agency on cultural resources documentation for archaeological/historic clearances at each Work Location, and preparation of the necessary documentation for submittal to the SHPO for clearances, and final receipt of SHPO clearance.
- d.** Strategy for coordinating with Agency to consult and coordinate with Native American tribes and address tribal issues.
- e.** Completion of applications for all required environmental permits, and accumulation of all documentation required for environmental clearances and authorizations. Design-Builder shall deliver a copy of all permit applications to Agency PM for Review and Comment at least seven (7) Business Days prior to submittal to the permitting Authority. In addition, Design-Builder shall deliver to Agency PM copies of all permits, orders, clearances, and authorizations obtained from regulatory Authorities upon receipt.
- f.** Plan for implementation of all actions required under environmental permits, orders, clearances, and authorizations obtained by Agency.
- g.** Plans for mitigating and remediating impacts on Wetlands, wildlife and wildlife habitat, water quality, visual and aesthetic resources, cultural resources, threatened and endangered species, storm water, and other resources.
- h.** Environmental compliance team roles, responsibilities and authority, and communication protocols for environmental matters, including communications with regulatory Authorities.
- i.** Identification of all required environmental permits and approvals. Include:

 - 1.** List of all environmental permits and approvals obtained (including those obtained by Agency), identifying the issuing regulatory Authority and Authority contact information.
 - 2.** List of all environmental permits and approvals to be obtained, and dates of anticipated issuance by regulatory Authorities.
 - 3.** Date and duration of approval, and any conditions stipulated in each environmental permit and approval obtained.
 - 4.** Key restrictions or limitations (e.g., limit of Wetland fill, dates of in-water Work activities, mitigation requirements).
 - 5.** Programmatic agreements, if any, which are not anticipated to be used and the rationale for not using them.
 - 6.** Variances, if any, anticipated to be needed from programmatic permits (if using), and the rationale for why they are necessary.

- j.** Procedures for plan implementation. Include:

 - 1. Implementation schedule, including key construction dates.
 - 2. Estimated dates and length of construction activities in or near environmental features.
 - 3. Procedures to avoid or minimize adverse effects during temporary water management activities (dewatering, flow diversion, etc.).
- k.** Level of anticipated regulatory Authority participation in Project activities. Include:

 - 1. Description of required regulatory Authority involvement, if any, including attendance at Project meetings.
 - 2. List of regulatory Authorities to receive monitoring reports, newsletters, or Project updates.
 - 3. Identification of the technical lead responsible for substantive contacts with regulatory Authorities.
- l.** Levels of responsibility and authority of:

 - 1. On-site staff (e.g., Project Manager, Project Quality Manager, Construction Manager).
 - 2. Other local office staff.
 - 3. Environmental Manager.
 - 4. Environmental Team.
- m.** Environmental controls and mitigation methods such as, but not limited to:

 - 1. Sediment/erosion control and water quality.
 - 2. Dust control and air quality.
 - 3. Wetland and wildlife protection.
 - 4. Waterway and fish protection.
 - 5. Cultural resources protection.
 - 6. Noise control.
 - 7. Hazardous Material/waste management.

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n. Procedures for inspection, monitoring, and corrective and preventive actions. Include:

1. A compliance monitoring and reporting program that identifies frequency of monitoring, reporting format (provided by Agency, or an equivalent), and personnel responsible for monitoring.
2. Procedures for reporting and record-keeping, including an Environmental Logbook that shall contain copies of the monitoring reports, a photographic record (photograph files shall be maintained in .jpg or .tiff format), and all applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations.
3. Procedures for reporting and handling noncompliance, including the names of regulatory Authority contacts to be notified, the means by which notification is to be accomplished, and the timeframe for notification (note that if non-compliance with Tribe and SHPO requirements arise, Design-Builder shall promptly alert Agency PM and assist Agency in consultation.).
4. Names of Key Personnel responsible for implementing corrective or preventive action.
5. Follow-up procedures and documentation of implementation of corrective action.

o. Procedures for final monitoring inspections to assess compliance with permit requirements and the long-term beneficial effects of achieving the goals of the applicable environmental performance Standards. Final monitoring reports shall be completed within 30 Calendar Days of the final inspection and shall include:

1. Summary of the construction history at each Work Location, including significant deficiencies or incidents that may have occurred during the life of the Project and the corrective actions taken.
2. General assessment of the overall compliance of each Work Location with the Environmental Performance Standards and the requirements of the various environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations for the Project.
3. Successes, failures, and remedial actions for site restoration and compensatory mitigation sites.

p. Procedures for emergency response. Procedures shall include:

1. The names of Design-Builder and regulatory Authority emergency response contacts, and office, 24-hour and mobile telephone numbers, e-mail address, and work address for each contact.
2. Emergency Response Plan.

q. Environmental training program (Employee Awareness Training) processes. Program processes shall include:

1. A description of any special training needs.
2. A schedule for orientation and field meetings required to inform key staff of the environmental compliance issues associated with the Project.
3. Process to track training efforts, including dates, topics, and staff trained.

(10) Project Prospectus Part 3 / Categorical Exclusion - The Project Prospectus Part 3's were developed with certain assumptions that were necessary for their completion. If during the term of the Contract design activities change the validity of those assumptions, or Design-Builder wishes to put forth a Cost-Reduction Proposal, Design-Builder shall update and expand Part 3 of the Project Prospectus pursuant to ODOT, FHWA, and NEPA guidance, and shall submit it to Agency PM upon completion. Agency will not approve any change that would result in a change in the NEPA classification. Design-Builder shall bear any schedule or cost risk associated with the proposed design change.

If an updated and expanded Part 3 is not approved by FHWA, Design-Builder shall make the changes to its Plans and Design-Builder Specifications and to Part 3 necessary to gain Project approval from FHWA. This documentation shall be submitted to Agency PM, and Agency PM will submit it to FHWA and coordinate with FHWA for approval.

(11) Status Reports and Meetings - Design-Builder shall provide weekly environmental status and compliance reports to Agency PM. In addition, Design-Builder shall arrange and schedule weekly or bi-weekly meetings, depending on the level of permitting and construction activity in or adjacent to environmentally sensitive areas with Agency PM to review Project compliance with permits and approvals. Meeting minutes shall be prepared and distributed within five (5) Business Days of the meeting.

(12) Compliance Coordination Meetings - Design-Builder shall coordinate with Agency and regulatory Authorities to ensure adequacy of environmental compliance submittal materials. Coordination efforts shall include a mandatory Environmental Compliance Plan review meeting and pre-application submittal meetings, as necessary.

a. Environmental Compliance Plan Review Meeting - Design-Builder shall schedule a meeting with Agency PM for the purpose of presenting the overall environmental compliance strategy contained within the draft ECP. The meeting shall be held within five (5) Business Days of draft ECP submittal. Design-Builder shall ensure that the following team members participate in the meeting:

- Project Manager
- Design Manager
- Construction Manager
- Environmental Manager
- Project Quality Manager

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b. Permit Pre-Application Submittal Meetings - Design-Builder shall schedule a meeting with the appropriate regulatory Authority personnel and Agency PM for the purpose of ensuring that application submittal materials will meet necessary requirements. Design-Builder shall record regulatory Authority comments at the meeting and include a log describing how each comment was resolved in the submitted application materials. Design-Builder shall ensure the following team members participate in the meeting:

- Environmental Manager
- Relevant Environmental Technical Lead, if different than the Environmental Manager

(13) Submittals - Design-Builder shall submit the following to Agency PM and appropriate regulatory agencies as needed:

- **Draft Environmental Compliance Plan (part of the draft Project Quality Plan)** - within 30 Calendar Days after NTP, and prior to start of any Work
- **Final Environmental Compliance Plan (part of the final Project Quality Plan)** - must be Accepted by Agency within 60 Calendar Days of NTP or Work shall be stopped
- **Level 1 Pre-Construction Assessment (PCA), by Work Location** - at least 60 Calendar Days prior to start of construction (if Project is an OTIA III Bridge project)
- **Level 2 Pre-Construction Assessment (PCA), by Work Location** - at least 60 Calendar Days prior to start of construction (if Project is an OTIA III Bridge project)
- **Level 3 Pre-Construction Assessment (PCA), by Work Location** - at least 60 Calendar Days prior to start of construction (if Project is an OTIA III Bridge project)
- **Updated Part 3 Project Prospectus** - as needed
- **Permit applications** – at least seven (7) Business Days prior to submittal to permitting Authority
- **Environmental permits and authorizations, by Work Location** - incorporated into Environmental Compliance Plan upon receipt
- **Weekly Status/Compliance Reports** - weekly
- **Construction Monitoring Report(s)** - frequency and content as determined in the Environmental Compliance Plan
- **Post-Construction Monitoring Report, by Work Location** - within 30 Calendar Days of the final inspection

Agency PM shall have at least 10 Business Days to complete review of all submittals.