

*Texas Department of Transportation  
Environmental Affairs Division*

## **Standards of Uniformity for Projects Without Federal Highway Administration Involvement**

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A Guide to Projects without FHWA Involvement

## **Water Resources**

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Including the SOU language below does not guarantee compliance with the SOU. The language must also be technically correct and consistent with the other information presented in the document. For example, if the document states that wetlands are not present and references the wetland delineation forms, the wetland delineation forms should not indicate that wetlands are present. Similarly, if the document includes the correct language indicating that the project is not in a floodplain, but the project is in fact in a floodplain, the document would not meet the SOU.

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
<b>Section 404 of the Clean Water Act: Waters of the U.S. NWP and IPs</b>				
1			<p>Does the document include one of the following statements?</p> <p><i>This project would not result in the placement of temporary or permanent dredge or fill material into [potentially] jurisdictional Waters of the U.S., including wetlands or other special aquatic sites; therefore, a Section 404 permit would not be required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The placement of temporary or permanent dredge or fill material into [potentially] jurisdictional Waters of the U.S. would be authorized under NWP [insert number] [with or without] a Pre-Construction Notification (PCN).</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project would result in the placement of [include amount (acres, cubic feet)] of permanent dredge or fill material into Waters of the U.S., including wetlands, and would exceed the limits authorized by a NWP; therefore a Section 404 Individual Permit would be required.</i></p>	<p>33 USC 1344 33 CFR 320-331 23 CFR 771 <a href="#">Regional Conditions</a> <a href="#">Regulatory Guidance Letters</a></p>
2			Does the document describe why the area was determined to be (potentially) jurisdictional or non-jurisdictional?	
3			<p>Does the document include one of the following statements?</p> <p><i>The USACE issued a <a href="#">jurisdictional determination</a> on [date].</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>An analysis of [USGS topographic maps, FEMA maps, field reconnaissance/wetland delineation, jurisdiction established through prior work within the water, previous decisions made by the USACE under similar circumstances, etc.] reveals [no] potentially jurisdictional</i></p>	

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Yes	No	N/A	Description of Item Sufficiency	References/Guidance						
			<i>waters of the U.S. that would be impacted by the proposed project.</i>							
4			If discharge of fill or dredge material within jurisdictional or potentially jurisdictional waters or wetlands is undetermined, is there a description of why this is the case, focused on the expected impacts and the possible permitting requirements?							
5			If jurisdictional or potentially jurisdictional waters or wetlands are present but will not be impacted by the project, are these features described?							
			Does the document discuss how impacts to jurisdictional or potentially jurisdictional waters or wetlands will be avoided?							
6			If the project would result in fill within jurisdictional or potentially jurisdictional waters ( <b>Sections C, D, E, and F are not required if the project requires an Individual Permit</b> ):							
7			A.	Does the document include a map identifying all jurisdictional waters and/or wetlands, impacted jurisdictional waters and/or wetlands, and project limits?  If wetlands are present, does the document include wetland delineation form(s) and indicate observation points on the map? Do the wetland delineations and data forms adhere to the requirements of the appropriate <a href="#">regional supplement</a> to the 1987 USACE wetland delineation manual?						
8			B.	Are the impacts and expected permitting requirements denoted as in the table below? Is acreage and/or linear feet provided as appropriate? If quantifying the impacts in this table is overly cumbersome (e.g., the impacts are the result of dozens of SETs), is a verbal summary of the same information provided?						
9	Name of Water Body or other location indicator	Existing Structure	Proposed Work or Structure	Permanent Fill		Temporary Fill		NWP (indicate number)	PCN (Y/N)	IP (Y/N)
				Open Waters (acres and linear feet)	Wetlands or other Special Aquatic Sites (acres)	Open Waters (acres and linear feet)	Wetlands or other Special Aquatic Sites (acres)			
10			C.	Does the document address how the activity(ies) meet(s) the description(s) of the chosen NWP(s)? See the example text below for the most common NWPs: <ul style="list-style-type: none"> <li>NWP 3(a): <i>The maintenance activity at [indicate stream name or station number if there is more than one regulated area] would result in [indicate change in footprint] acres of permanent fill within waters of the U.S.</i></li> </ul>						

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				<p><i>This increase is due to [indicate an allowable reason, e.g. changes in materials, construction techniques, or safety standards]. The purpose of the project is not to add capacity or relocate a bridge. Therefore the activity would be authorized under paragraph (a) of NWP 3.</i></p> <ul style="list-style-type: none"> <li>▪ <i>NWP 13: The bank stabilization at [indicate stream name or station number, if there is more than one regulated area] would not involve the placement of material in excess of the minimum necessary for erosion protection and does not involve stream channelization. Therefore the activity would be authorized under NWP 13.</i></li> <li>▪ <i>NWP 14: The purpose of the proposed activity is to [construct, expand, modify or improve] the linear transportation facility at [indicate stream name or station number, if there is more than one regulated area]. Appropriate measures would be taken to maintain normal downstream flows and minimize flooding. Temporary fills would consist of materials and be placed in a manner that would not be eroded by expected high flows. Temporary fills would be removed in their entirety and the affected area returned to pre-construction elevations, and revegetated as appropriate. If the project involves stream modification, stream channel modifications, including bank stabilization, would be limited to the minimum necessary to construct or protect the structure and the immediate vicinity of the project.</i></li> <li>▪ <i>NWP 23: The Federal Highway Administration (FHWA) [is expected to/has concurred] that this project is categorically excluded from further environmental documentation [include date if applicable], because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment and the USACE has concurred with that determination in Regulatory Guidance Letter 05-07.</i></li> </ul>
11			D.	<p>Does the document include the following statement? <i>The activity would comply with all general and regional conditions applicable to NWP [indicate number]</i></p>
12			E.	<p>Does the document indicate why a PCN is/is not required with one of the following statements? <i>A Preconstruction Notification (PCN) for NWP [indicate number] at [indicate name of water body or station number] would not be required because [discuss the acreage or linear foot PCN trigger for the relevant NWP, as</i></p>

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				<p><i>appropriate]. <a href="#">There is no potential to affect listed species or designated critical habitat, or any historic properties listed or eligible for listing on the National Register of Historic Places.</a></i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>A Preconstruction Notification (PCN) is required at [indicate name of water body or station number] because [indicate which PCN trigger(s) is (are) met].</i></p> <p>If verification has been issued for this project, does the document include the date and permit number?</p>
13			<p>F.</p>	<p>If more than one area of the project would require a NWP, does the document include one of the following statements?</p> <p><i>The activities at [indicate name of water bodies or station numbers] have been identified as single and complete* projects as defined in the Nationwide Permits because [insert reason] and will therefore be permitted separately.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The activities at [indicate name of water bodies or station numbers] have been determined to not be single and complete* projects as defined in the Nationwide Permits, because [insert reason] and would therefore be permitted together.</i></p> <p>*Single and complete - For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.</p>
14			<p>G.</p>	<p>If compensatory mitigation is triggered by the NWP General Conditions, Regional Conditions for Texas, or if it is requested at the discretion of the USACE, does the document describe how the impacts would be mitigated (avoidance, minimization, <a href="#">bank credits</a>, onsite mitigation, etc.)? If use of a mitigation bank is proposed, does the discussion include the bank name and the quality of wetlands being impacted, amount of impacts, and proposed credits (if known)? If the project requires third party mitigation, was there coordination with Texas Parks and Wildlife Department (TPWD) to provide TPWD an opportunity to offer mitigation options before pursuing the third party mitigation <a href="#">options</a>?</p>

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15			<p>H. Are all technical reports in support of a wetland determination or delineation, either produced by TxDOT or TxDOT consultants, identified in either a table or a separate reference page, and is the following example reference format utilized?</p> <p>Author, date, title, number of pages.</p> <p>Example: <i>Ace Environmental. 2008. Wetland Delineation, S.H. 64 at Little Coon Creek, Smith County, Texas. 45 pp.</i></p>	
<b>Section 401 of the Clean Water Act: Water Quality Certification</b>				
16			<p>Does the document include one of the following statements?</p> <p><i>This project would not require a USACE Section 404 Permit; therefore Section 401 Certification would not be required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The 401 Certification requirements for NWP [indicate number] would be met by implementing approved [indicate applicable <a href="#">BMP categories</a>: erosion controls, sediment controls, and/or post-construction TSS controls] BMPs from <a href="#">TCEQ's 401 Water Quality Certification Conditions</a> for Nationwide Permits.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project will impact less than 1,500 linear feet of stream and/or 3 acres of waters of the U.S. and will not affect rare/ecologically significant wetlands. The <a href="#">Tier I</a> 401 Certification requirements for the Section 404 Individual Permit will be met by implementing approved erosion controls, sediment controls, and post-construction TSS controls. A Tier I Checklist will be completed and submitted to TCEQ and the USACE.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project will impact more than 1,500 linear feet of stream and/or 3 acres of waters of the U.S. or will affect rare/ecologically significant wetlands. The <a href="#">Tier II</a> 401 Certification Questionnaire and Alternatives Analysis Checklist will be completed and submitted to TCEQ.</i></p>	<p>33 USC 1341 30 TAC 279 23 CFR 771</p>

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<b>Rivers and Harbors Act of 1899, Section 10</b>				
17			<p>Does the document include one of the following statements?</p> <p><i>This project does not involve work in or over a <a href="#">navigable water of the U.S.</a>, therefore Section 10 of the Rivers and Harbors Act does not apply.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project includes [describe work] in or over a navigable water of the U.S. under Section 10 of the Rivers and Harbors Act. The Section 10 activity will be covered under NWP [insert permit number] [with/without] a PCN.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project includes [describe work] in or over a navigable water of the U.S. under Section 10 of the Rivers and Harbors Act and exceeds the limits of the NWP. The Section 10 work will be authorized under an individual Section 10/404 Individual Permit.</i></p>	<p>33 USC 401, et seq. 23 CFR 650, Subparts D &amp; H 33 CFR 114-115</p>
<b>Section 303(d) of the Clean Water Act</b> <b>(Please reference the current EPA approved 303(d) list. As of July 2009, the current list is from 2008.)</b>				
18			<p>Does the document include one of the following statements?</p> <p><i>Runoff from this project would not discharge directly into a <a href="#">Section 303 (d)</a> listed threatened or impaired water, or into a stream within 5 miles upstream of a Section 303(d) listed threatened or impaired water. The [insert year of the most recent EPA approved list] 303(d) list was utilized in this assessment.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>Runoff from this project would discharge ["directly into" or "within 5 stream miles upstream of"] Segment(s) [insert segment number(s)] of [insert stream name(s)], which [is/are] listed as threatened/impaired for [insert</i></p>	<p>Memorandum of Understanding between TxDOT and TCEQ 43 TAC 2.23 30 TAC 7.119 33 USC 1251-1377 TWC 26.023 30 TAC 307 23 CFR 771</p>

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			<p>constituent(s) of concern] <i>on the</i> [insert year of the most recent EPA-approved list] <i>303(d) list</i>. [If the project may potentially contribute the constituent of concern, describe BMPs that would be used] <i>to control the constituent of concern at this location. This project is not expected to contribute the constituent of concern to the impaired water body.</i></p> <p><b>Note: A stream segment number is only required for listed impaired streams. If a non-listed stream does not have a segment number, the nearest downstream segment number may be inserted into ETS. TCEQ 303(d) coordination is not required for CEs.</b></p>	
<p><b>Section 402 of the Clean Water Act: Texas Pollutant Discharge Elimination System, Construction General Permit</b></p>				
			<p>Does the document include one of the following statements?</p> <p><i>This project would include less than one acre of earth disturbance, and is not part of a larger common plan of development that would disturb one or more acres, therefore TCEQ's Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP) does not apply.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><u><i>This project would include one or more acres of earth disturbance, but less than five acres.</i></u> <i>TxDOT would comply with TCEQ's Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP). A Storm Water Pollution Prevention Plan (SW3P) would be prepared and implemented, and a construction site notice would be posted on the construction site. A Notice of Intent (NOI) would not be required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project would include five or more</i></p>	<p>33 USC 1342 40 CFR 122 30 TAC 205, 216, 281.25 23 CFR 771</p>

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			<p><i>acres of earth disturbance. TxDOT would comply with TCEQ's Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP). A Storm Water Pollution Prevention Plan (SW3P) would be implemented, and a construction site notice would be posted on the construction site. A Notice of Intent (NOI) would be required.</i></p>	
<p><b>Section 402 of the Clean Water Act: Texas Pollutant Discharge Elimination System, Municipal Separate Storm Sewer System (MS4)</b></p>				
20			<p>Does the document include one of the following statements?</p> <p><u><i>This project is not located within the boundaries of a regulated Municipal Separate Storm Sewer System.</i></u></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within the boundaries of the [Phase I (indicate city) or Phase II (indicate which Urbanized Area)] Municipal Separate Storm Sewer System, and would comply with the applicable MS4 requirements.</i></p>	<p>33 USC 1342 40 CFR 122 30 TAC 205, 216, 281.25 23 CFR 771 <a href="http://cfpub.epa.gov/npdes/stormwater/munic.cfm">http://cfpub.epa.gov/npdes/stormwater/munic.cfm</a></p>
<p><b>Floodplains</b></p>				
21			<p>Does the document include one of the following statements?</p> <p><i>The project is not located within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project is located within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain, however no work will occur in the floodplain.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project is located within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain. The hydraulic design for this project would be in accordance with current FHWA and TxDOT design policies. The</i></p>	<p><a href="#">Executive Order 11988</a> Executive Order 12148 DOT Order 5650.2 23 CFR 650, Subpart A 44 CFR 59, 62, 64, 68, 70, 71, 75, 77 23 CFR 771</p>

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			<p><i>facility would permit the conveyance of the 100-year flood, inundation of the roadway being acceptable, without causing significant damage to the facility, stream, or other property. The proposed project would not increase the base flood elevation to a level that would violate applicable floodplain regulations and ordinances. Coordination with the local Floodplain Administrator will be required. Or, previous sentence may be substituted with Coordination is not required because [insert county or community] does not participate in the NFIP.</i></p>	
<b>Trinity River Corridor Development Certificate</b>				
22	This section is required for projects in Dallas, Tarrant, or Denton County.			
23			<p>Does the document include one of the following statements?</p> <p><i>The project is not within the Trinity River Corridor Development Regulatory Zone; therefore, a Corridor Development Certificate (CDC) permit would not be required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project is within the <a href="#">Trinity River Corridor Development Regulatory Zone</a> and a Corridor Development Certificate (CDC) would be required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>The project is within the Trinity River Corridor Development Regulatory Zone and a Corridor Development Certificate (CDC) would typically be required. TxDOT [has applied/will apply] for an exemption as the project meets the criteria for exemption from the CDC requirement.</i></p>	North Central Texas Council of Governments
<b>Texas Coastal Management Program</b>				
24	This section is required for projects in Orange, Jefferson, Chambers, Harris, Galveston, Brazoria, Matagorda, Jackson, Calhoun, Victoria, Refugio, Aransas, San Patricio, Nueces, Kleberg, Kennedy, Willacy, and/or Cameron counties.			

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25			<p>Does the document include one of the following statements?</p> <p><i>This project is located within [indicate county(ies)], but is not within the <a href="#">Texas Coastal Management Program (TCMP)</a> boundary, therefore a consistency determination is not required.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within [indicate county(ies)], which [is/are] within the Texas Coastal Management Program (TCMP) boundary. TxDOT has reviewed this proposed action for consistency with the TCMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable TCMP goals and policies, and would not have a direct and significant adverse effect on the Coastal Natural Resource Area (CNRAs), identified in 31 TAC Chapter 501.31.</i></p>	<p>16 USC 1451-1465 15 CFR 923, 926, 930 23 CFR 650.211 31 TAC 281 23 CFR 771</p>
26	<p><b>Note: If the project is within the CMP Boundary, District personnel are required to mark the “CZM” and “Consistent” flags “Y” when filling out the ETS Water screen. Failure to do so will result in a non-compliance report for the Water SOU.</b> TxDOT is required by 31 TAC 305 to “maintain a record of all proposed actions that are subject to the CMP and provide such record to the council on a quarterly basis.” ENV generates a quarterly report from ETS, based on the entries made in the Water review screen. Failure to mark those fields will result in non-compliance with 31 TAC 305.</p>			
<p><b>Coastal Barrier Resources Act (CBRA)</b> <b>(Coordination requirements subject to change pending FHWA/USFWS consultation)</b></p>				
27	<p>This section should be inserted after the CMP Section.</p> <p>This section is only required for projects in Jefferson, Galveston, Brazoria, Matagorda, Calhoun, Aransas, Nueces, Kleberg, Willacy, and/or Cameron Counties (<a href="#">Texas CBRA Maps</a>)</p>			
28			<p>Does the document include one of the following statements?</p> <p><i>This project is located within [indicate county(ies)] but is not located within a designated CBRA map unit. Coordination with the U.S Fish and Wildlife Service (USFWS) is not <a href="#">required</a>.</i></p>	<p><a href="http://www.fws.gov/habitat_conservation/coastal_barrier.html">http://www.fws.gov/habitat_conservation/coastal_barrier.html</a></p>

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			<p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within [indicate county(ies)] and is within a designated CBRA map unit, but is exempt from CBRA regulations according to Section 6 subsection 3 of the CBRA. The purpose of this project is to [replace, reconstruct, maintain, or repair] the existing transportation facility. The project does not add capacity or constructing a new transportation facility. Contact ENV-WRM regarding coordination.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within [indicate county(ies)] and is within a designated CBRA map unit [insert CBRA map unit name and number]. The project will [construct or expand] [roadway name and/or number]. Contact ENV-WRM regarding coordination.</i></p>	
<b>Edwards Aquifer Recharge and Contributing Zones</b>				
29	<p><a href="#">This section is required for projects in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and/or Williamson Counties.</a></p>			
30			<p>Does the document include one of the following statements?</p> <p><i>This project is not located within the <a href="#">Edwards Aquifer Contributing or Recharge Zones</a>; therefore, the Edwards Aquifer Rules do not apply.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within the Edwards Aquifer Contributing Zone and would disturb [insert "less than five" or "five or more"] acres of earth; therefore, a Contributing Zone Plan [would/would not] be submitted to TCEQ.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project is located within the Edwards Aquifer Recharge Zone; therefore, a Water Pollution Abatement Plan would be submitted to TCEQ.</i></p>	<p>Texas Water Code 26.401 30 TAC 213 23 CFR 771</p>

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<b>International Boundary and Water Commission</b>				
31			This section is required for projects in U.S.-Mexico Border Counties.	
32			<p>Does the document include the following statement?</p> <p><i>This project [would/would not] be located within the floodplain of the Rio Grande; therefore, coordination with the <a href="#">International Boundary &amp; Water Commission (IBWC)</a> [would/would not] be required.</i></p>	<p>International Bridge Act of 1972 33 USC 535, et seq. Executive Order 11423 Executive Order 12847 1944 Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and Mexico 23 CFR 771</p>
<b>Wild and Scenic Rivers</b> (This section is required for projects that impact the Rio Grande between the New Mexico/EI Paso boundary to the Terrell/Val Verde County Line)				
33			<p>Does the document include one of the following statements?</p> <p><i>This project will not involve work within the designated segment of the Rio Grande that would harm the river's free-flowing condition, water quality, or outstanding resource values.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project would involve work within the designated reach of the Rio Grande. Formal coordination with FHWA and the National Park Service will be required.</i></p> <p>Note: Please contact Environmental Affairs if this project will involve work in the designated segment of the Rio Grande.</p>	
<b>General Bridge Act/Section 9 of the Rivers and Harbors Act (U.S. Coast Guard Permit)</b>				
34			Does the document include one of the following statements?	

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			<p><i>This project does not involve work in or over a <a href="#">navigable water of the U.S.</a>, therefore Section 9 of the Rivers and Harbors Act does not apply.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project does involve work in or over a navigable water of the U.S., but does not require a USCG permit, because the waters under the proposed bridge are not used or are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce and/or are not tidal, or if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet long. FHWA has concurred [provide date] or is expected to concur that the project falls within the approved category and a permit is not required. A lighting exemption [will/has been] requested [include date of request].</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>This project includes [describe work] in or over a navigable water of the U.S [include water body name] under Section 9 of the Rivers and Harbors Act. The USCG Bridge project Questionnaire was submitted to the USCG on [date]. The USCG Section 9 permit application was submitted on [date].</i></p>	

**NOTE:** Compliance with Executive Order 11990 (Protection of Wetlands) is not required for non-federally funded or assisted projects on non-federal land. If there is any chance of the project receiving federal funding or assistance, compliance with Executive Order 11990 is strongly recommended.