Balancing Budgets and BMPs

Best Practices and Recommendations for Environmental Commitment Monitoring
Overview

• What are Environmental Commitments? Why are they important?
• Review of ODOT’s Environmental Commitment process
• Case Study: Monitoring of FRA-270 Central Outerbelt (Columbus)
What are Environmental Commitments? Why are they important?
• Any agreed-upon action to mitigate (restore, enhance, avoid, minimize, and/or replace) impacts to the human environment (40 CFR 1508.20)
• Ensure compliance with state and federal law
• Agreed upon by ODOT and regulatory agencies as part of permit/coordination process
• Can originate and require implementation at any point in Project Development Process and during Operation & Maintenance
Examples:
• Seasonal work restrictions
• Avoidance of sensitive resources
• Installation of protective fencing
• Construction noise restrictions
• PCS soils handling
• Maintain pedestrian movements
Importance: ODOT NEPA Assignment

- MOU between FHWA and ODOT Pursuant to 23 USC 327, effective 12/28/2015
- Under NEPA Assignment, ODOT assumed the FHWA National Environmental Policy Act (NEPA) responsibilities
- Now ODOT’s responsibility to determine NEPA actions, approve all environmental documents and ensure compliance with all environmental commitments
Importance: Penalties and Other Consequences

- Failure to comply and/or follow through with environmental commitments can result in:
  - Loss of federal funding and approvals
  - Degraded public and agency relations
  - Fines
  - Project schedule delays
  - Potential criminal charges against individuals involved
ODOT’s Environmental Commitments Process
Guidance for Writing Environmental Commitments

(ODOT-Office of Environmental Services (OES), July 3, 2017)

- Maintained on ODOT-OES Website
- “Decide”, “Write”, “Communicate”, and “Follow-Through”
- Appendix A – Tracking EC’s using ODOT’s EnviroNet
- Appendix B – List of Common Commitments

OES Guidance for Writing Environmental Commitments (7.3.2017)

Environmental commitments are any agreements or actions to mitigate, enhance, avoid, minimize, and/or replace impacts to the human environment. The human environment includes social, economic, cultural, and natural resources. Typically, these actions are agreed upon between ODOT and the regulatory agencies, as part of the coordination process and compliance with state and federal law. Failure to comply with or follow through with these actions can result in loss of federal funding and approvals, degraded public and agency relations, fines, project schedule delays, or potentially criminal charges against individuals associated with the action. Furthermore, failure to comply with environmental commitments could negatively impact ODOT’s NEPA compliance status. Environmental commitments can originate and require implementation at any point in the Project Development Process and during operations in maintenance. Environmental commitments can be as simple as a requirement for seasonal work restrictions or as complex as a treatment plan for cultural resources. This simple guidance assumes for users how to decide what actions become environmental commitments, how to write environmental commitments, how to communicate with the responsible individuals, and how to record and track successful implementation of environmental commitments in EnviroNet.

ODOT’s, during NEPA, what actions ODOT will take to mitigate (restore, enhance, avoid, minimize, and/or replace) impacts to the human environment:

1. What is the purpose for which the mitigation is proposed as part of the ODOT action?

2. What is the proposed mitigation represent a reasonableness of action that considers the impacts of the action and the benefit of the proposed mitigation?

3. Consider the other factors that are in the context of which the proposed mitigation would consist in compliance with a Federal statute, Executive Order, or state law (or federal regulations or policy).

4. Discuss mitigation opportunities with the draft environmental design, engineering, operations & maintenance, OES or others as needed to decide what actions will be included as environmental commitments.

5. The statement that ODOT will include as environmental commitments are written in the NEPA document.

Write the Environmental commitments for the NEPA document:

1. Environmental commitments should be simple, clear, and should address “What, Where, When, Why” and potentially “How” of the action. Note: some commitments may not require all five areas.

a. “What” names the entity responsible for implementing the environmental commitment, including objectives, who is to do the work, who is responsible for succeeding, and who is responsible for multiple responsible citizens.

b. “Where” provides direction as to what the commitment is requiring and includes where and when.

c. “When” provides direction for the time that the commitment operates.

d. “Why” provides specific reasons for the work, and does not apply to NEPA. Avoid subjective terms such as “recognizable amount of time” and “minimal” as these words are difficult to enforce.

e. “How” provides specific and applicable procedures or steps for how to complete the commitment. This can often be directly related to the performance measure of the commitment developed in EnviroNet.
OES’s EC Guidance

“DECIDE”

• Decide what actions ODOT will take to mitigate impacts to the human environment

• Typically decided during Planning and Environmental Engineering Phases, but can occur anytime in the PDP

• Personnel involved in decision making can include ODOT Project Manager, District Environmental Coordinator, Consultant, 3rd Party Reviewers (resource agencies), Locals, Stakeholders, Public
OES’s EC Guidance

“WRITE”

• Environmental commitments should be written to be *simple* and *clear*, and should address:
  • WHO: Who is responsible for implementing?
  • WHAT: What is required?
  • WHERE: What area does this commitment address?
  • WHEN: What is the timeframe and/or deadline for the EC?
  • HOW: How will the EC be completed?

• Understand we all have different backgrounds and areas of expertise – communicate across disciplines
OES’s EC Guidance

• The “Incorrect” Way

The appropriate notifications shall be given to ODNR prior to work within 1000’ of the State Scenic Olentangy River.

• WHO is responsible?
• WHEN should notification occur?
• HOW should notification occur?

• The “Correct” Way

The Contractor shall notify the Project Engineer via email 25 days prior to work within 1000 feet of the State Scenic Olentangy River. The Project Engineer shall notify the District Environmental Coordinator via email 20 days prior to work within 1000 feet of the River. The District Environmental Coordinator shall coordinate with the ODNR Scenic Rivers 15 days prior to any work within 1000 feet of the Olentangy River.

*List of Common Commitments provided as Appendix B of OES Guidance
“COMMUNICATE”

• Communicate to the responsible entity their obligation(s)
• Utilize the Environmental Commitments Tab in EnviroNet – Instructions in Appendix A
• Ensure ECs are communicated to long-term owners (O&M, County forces, LPAs)
• All ECs applicable to construction should be part of pre-bid and pre-construction meetings
• Well-written ECs are key to clear communication
Environmental commitments are entered into EnviroNet by the DEC

- C1/C2 level projects – listed in C1/C2 tabs
- D1 and higher level projects – listed in each discipline specific tab
• Other tools for communication:
  • Table
  • Spreadsheet
  • Email
• Relate information to DEC

<table>
<thead>
<tr>
<th>General, Maintenance of Traffic During Construction</th>
<th>Responsible Party</th>
<th>Completed (YES/NO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Appropriate signage will be installed to alert pedestrian/bicycle users of temporary access restrictions and/or closures to this shared use path connection, in order to direct users to secondary access points.</td>
<td>ODOT</td>
<td>YES (Plan Sheet 1.5)</td>
</tr>
<tr>
<td>2. Local emergency services and community services will be notified by the City of Athens a minimum of fourteen (14) days in advance of project construction. Included in this notification will be the dates/times associated with any planned closures.</td>
<td>City of Athens</td>
<td>YES – City is aware of commitment and this is the City’s typical project delivery procedure</td>
</tr>
<tr>
<td>3. A plan note will be included requiring the Contractor to notify the City of Athens twenty-one (21) days prior to changes in traffic patterns or planned closures.</td>
<td>ODOT</td>
<td>YES (Plan Sheet 10)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ESA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Commitment</td>
</tr>
<tr>
<td>1. For any change in project scope of work which results in a depth of excavation exceeding 4 feet and/or ROW acquisition from Site 7 (Sonc Restaurant), Site 9 (Athens Mold and Machine), or Site 10 (Stering Industries), further environmental site assessment will be required.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 4(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Commitment</td>
</tr>
<tr>
<td>1. Access to the Ohio University Recreation Fields/Area will be maintained at all times during construction activities.</td>
</tr>
</tbody>
</table>
“FOLLOW THROUGH”

• An Environmental Commitment is only as good as its implementation
  - ECs must be fulfilled successfully

• Keys to implementation:
  • Use the simplest measure possible – Photographs, Emails, PDFs
  • Larger projects should consider using an on-site environmental monitor

• Upload documentation of successful completion to EC Tab/Provide to DEC

• Consult with DEC on acceptable methods
Case Study: Monitoring of FRA-270
North Central Outerbelt Project (Columbus, Ohio)

- Large interchange modification at Interstate 270, State Route 315 and US Route 23
  - Phase C: FRA-270-21.67
  - Phase D: FRA-270-22.85
- EC monitoring for Phase C and D
- Multiple sensitive resources and ECs
FRA-270: EC Monitoring Scope

• Develop EC Monitoring Plan:
  • CE Document
  • Waterway Permit Conditions
  • Stormwater Permit
  • Scenic River Coordination
  • Recreational 4(f) Resource Documents
  • Pertinent environmentally-related CMS items

• Execute EC Monitoring Plan:
  • Onsite compliance checks 1-2 times weekly throughout construction
  • E&S control compliance assistance
  • Inspection of corrective actions
  • Worksite HAWK cameras
  • Observation Report
  • Routine EC Spreadsheet Updates
Environmental Commitment Monitoring Checklists completed for each site visit:

- Ecological Commitments
- In-Stream Work Restriction Dates
- Waterway Permitted Impacts
- Scenic River Commitments
- Sediment and Erosion Control/Pollution Prevention
- Cultural/Recreational Section 4(f)
- Environmental CMS Items
- Post-Construction Commitments
- Inspection of Corrective Actions
Provides easy way to document compliance or non-compliance in the field

Ensures evaluation of all items and accurate documentation of observations

Used to create Onsite Observation Reports (targeted memos)
Onsite Observation Reports

Photo 3: Soils stockpile area has been established near wetland area. Appears to be a result from drilling activities. Runoff from stockpile is flowing towards the wetland. Need to install sediment controls.
• EC Monitoring documentation provided to ODOT in a Monthly Summary Report

• Monthly Summary Report includes:
  • Weekly onsite observation reports (photos, keyed to plan sheets)
  • EC Monitoring Checklists
  • Worksite HAWK camera observations
  • Photographs
FRA-270: Lessons Learned

• Effort up-front goes a long way
• Kick-off meeting with Contractor(s)
• Demarcate protected resources
• Maintenance of E&S controls
• Establish a chain of communication
• Taper off effort as construction moves away from sensitive resources
Summary

• ECs protect the integrity of the human and natural environment
• Ensure compliance with laws, regulations, and obligations
• ECs should be:
  • Written in simple and clear language
  • Communicated to the responsible party
• An EC is only as good as its implementation -- follow-through is key
• Compliance should be documented (Tool: EnviroNet EC Tab)
Summary

• Complex, highly visible projects, or projects with high quality resources, consider an on-site EC monitor

• EC monitoring benefits:
  • Helps identify issues early, before they become a significant problem
  • Minimizes non-compliance issues
  • Can save money by preventing fines and extra work

“If you think compliance is expensive – try non-compliance.”

Former U.S. Deputy Attorney General Paul McNulty