FEMA Environmental Compliance Basics for Newly Elected Officials and Emergency Managers

Kevin Jaynes, Regional Environmental Officer

FEMA Region 6

Texas Division of Emergency Management
San Antonio, TX
April, 2019
Overview

- Role of EHP at FEMA
- Overview of FEMA Programs and Projects Subject to EHP Review
- Natural and Cultural Resources Laws - Considerations
- Conditions and Tips
EHP Misconceptions

- **FEMA EHP does what??**
  - Clean up debris…
  - Decides where wetlands and endangered species are…
  - Determines flood zones…
  - Respond to sewage leaks…
  - We make up all these rules…
  - Bottleneck projects!

- Absolutely NONE of the above!

Think Liability Reduction – Due Diligence
Congratulations on your new disaster?

- As the “Applicant” or “Sub-recipient” – What to expect:
  - Request for Public Assistance
  - Exploratory Call, Recovery Scoping Meeting
  - Damage, Dimension Description
  - Site Inspection – with PA and EHP
  - Hazard Mitigation “Lock In” funding levels
  - EHP Greensheet – first explanation of your regulatory compliance obligations for PA local subrecipients
  - Expectations – Awareness – Pitfalls – Do’s and Don’t’s
Environmental Review

Q: When is an EHP review required?

A: When a Federal action occurs.

When any of the following nexus apply:

– Federal funding is used – i.e. PA, HM, Grants

– Federal agency approval, licensing, or permitting of an activity is required – i.e. USACE permit

– Agency facilities, equipment, and operations are involved – i.e. anything FEMA gives you

– Work is done on Federal Land – All FED agencies
FEMA’s EHP Review

- Required by Federal laws, regulations and Executive Orders
- Enables informed decision-making
- Ensures FEMA actions are in compliance with requirements that protect our nation’s water, air, coastal, fish and wildlife, agricultural, historical, and cultural resources, minimize potential adverse effects to children, low-income, and minority populations
- Must be complete before FEMA funding and before project activities can begin – with few exceptions (Some PA work)
- Applicant must comply with any conditions placed on project as result of EHP review
The Disaster Cycle – Grant Programs

1. PREPARE
2. PROTECT
3. RESPOND
4. RECOVER
5. MITIGATE
Prepare and Protect

FEMA’s Grant Program Directorate programs include:

- Security measures
  - fencing, lighting, access systems
- Communication equipment
  - towers, warning systems
- Construction of new EOCs
- Point-of-entry enhancements
- HSGP, PSGP, EOC, etc.
Role of Response Programs

Logistics and Operations programs provide direct assistance and support immediately after a disaster.

- Staging areas
- Base camps
- Joint Field Office (JFO) sites
- Preliminary Damage Assessments
- Disaster Recovery Centers

Mission Assignments
Recover: Public Assistance (PA)

PA provides funding to State, Tribal, and local governments, and certain types of private non-profit (PNP) organizations, including funding for:

- Debris removal – Category A
- Emergency protective measures – Category B
- Repair, replacement, or restoration of disaster-damaged, publicly owned facilities – Category C – G “permanent work”
Greensheet

- Greensheet is specific to each declared disaster
- Tribal disasters also have a Greensheet
- Contains important forms and information for Applicants
- Debris forms
- Contact information
- USACE consultation forms
- Information on each law
Greensheet Content

Coastal Areas

Projects located in mapped Coastal Zone Management Act (CZMA) areas or Coastal Barrier Resources Act (CBRA) units may require additional consistency review or consultation with the Texas General Land Office (GLO) or FEMA consultation with the USFWS prior to initiating work. Applicant is responsible for obtaining any required approvals from the GLO Coastal Management Program (CMP) prior to the commencement of work. The GLO Texas Coastal Boundary Map can be accessed at the following website: http://www.glo.texas.gov/coastal/coastal-management/forms/index.html. The CBRA Mapper can be accessed at the following website: https://www.fws.gov/cbra/Mapp/Mapper.html.

Work in or near Water or Wetlands

Projects that involve work in or near water or wetlands, including dredging or filling, in-stream debris removal, bank stabilization, or changes to culverts, crossings, or bridges, may require a permit from USACE. Applicant is responsible for obtaining any required approvals or permits from USACE prior to the commencement of work.

Cultural Resources

Section 106 of the NHPA requires Federal Agencies to take into account the effects of their activities on historic properties prior to the approval of the expenditure of Federal funds. FEMA has executed a Programmatic Agreement (PA) with THC which allows us to expedite many of the types of disaster recovery work that have been demonstrated through experience not to have an adverse effect on historic properties. Projects involving properties that are 45 years of age or older may require FEMA consultation with THC. All ground disturbing activities, including staging areas and borrow sources, must be reviewed by a FEMA Archaeologist and may require FEMA consultation with THC and Federally Recognized Tribes. A clear scope of work, including the age of any existing buildings or structures and the location and description of all ground disturbing activities is required to complete a review of the project.

Floodplains and Wetlands

FEMA reviews all projects to determine if they affect or will be affected by the floodplain and/or wetlands under EO 11998 and EO 11990. The objective of these orders is to minimize and/or avoid future impacts to the natural and beneficial values of floodplains and wetlands as well as impacts to facilities required using Federal funds. Projects located within these resource areas may require the use of the “no-step” decision making process requiring public notification and involvement in the consideration of the proposed project and any practicable alternatives. Applicant is responsible for obtaining any required approvals or permits from the local floodplain administrator for any projects located within the floodplain and/or wetland areas for projects located in wetlands.

Threatened or Endangered Species and Critical Habitat

Projects that involve work in water or are located within a natural area may have the potential to affect Threatened or Endangered Species and/or Critical Habitat. FEMA is able to expedite the review of many types of disaster recovery work which have been demonstrated through experience not to cause adverse effects. Some projects may require additional consultation with USFWS specific to the work to be performed and individual species of concern. The presence of Threatened or Endangered Species and/or Critical Habitat may affect project design, construction timeframes, or require best management practices to minimize adverse effects. Projects with the potential to affect Federally protected species may require FEMA consultation with the USFWS prior to the commencement of work. Federally protected species in your area can be accessed at the following website: https://ecos.fws.gov/pac/.

Contact Information

FEMA EHP
Kevin Jaynes
Regional Environmental Officer
Office: (940) 313-7224
kevin.jaynes@fema.dhs.gov

Texas Division of Emergency Management (TDEM)
State Public Assistance
Kristof Hermans
Supervising Program Director
Office: (512) 434-7843
Mobile: (512) 552-8849
Kristof.Hermans@tppea.texas.gov

Hazard Mitigation
Dave Jackson
CEM
Section Administrator, Mitigation
Office: (512) 434-7820
Mobile: (512) 221-5365
Dave.jackson@tceq.texas.gov

US Army Corps of Engineers
Texas District
Regulatory Branch
Office: (916) 609-7400

Port Worth District
Regulatory Branch
Office: (817) 808-1731

Galveston District
Regulatory Branch
Office: (409) 706-3069

Albuquerque District
Regulatory Office
Office: (505) 556-9639

United States Fish and Wildlife Service (USFWS)
Ecological Services Field Offices
Ron Smiley
Environmental Contaminants
Clear Lake, TX
Office: (281) 263-0302
Mobile: (281) 488-5882
ron_smiley@fws.gov

Texas Commission on Environmental Quality (TCEQ)
Central Office: (512) 236-1100
See attached regional information

Archaeological Sites and Ground Disturbance
Texas Historical Commission
Bill Martin (Cultural Resources)
Office: (512) 453-5867
bill.martins@thc.texas.gov

Historic Structures
Justin Kozicki
Office: (512) 453-7403
Justin.Kozicki@thc.texas.gov

Floodplain Management
Michael Segner, CFM
State Floodplain Coordinator
Texas Water Development Board
Office: (512) 463-2609
TCEQ Contacts

Texas Commission on Environmental Quality

Area & Regional Offices

Border and Permian Basin

Coastal and East Texas

Central Texas

North Central and West Texas

TCEQ Regional and Watermaster Offices

1 - AMARILLO
Regional Director, Brad Jones
8514 Range Dr.
Amarillo, TX 79118-6391
(806) 378-2843 Fax: (806) 371-1075

2 - LUBBOCK
Regional Director, Gary Shipley, P.E.
1601 26th St.
Lubbock, TX 79412-5055
(806) 765-7002 Fax: (806) 747-7172

3 - ARLINGTON
Regional Director, Monica Henry, P.E.
1017 Industrial Way
Arlington, TX 76011-7610
(817) 276-3492 Fax: (817) 276-3510

4 - DALLAS/FORT WORTH
Regional Director, Tony Walker
2400 Commerce St.
Dallas, TX 75201-3199
(214) 653-3100 Fax: (214) 653-8838

5 - TYLER
Regional Director, Elna Digennaro
3210 Pioneer Pkwy.
Tyler, TX 75701-2754
(903) 533-3140 Fax: (903) 533-3143

6 - EL RANCHO
Regional Director, Linda Gardner
201 E. Franklin Ave., Box 800
El Paso, TX 79906-2800
(915) 534-0500 Fax: (915) 534-0530

7 - MIDLAND
Regional Director, Linda Gardner
1301 E. 10th St.
Midland, TX 79701-3701
(432) 682-0526 Fax: (432) 682-0565

8 - SAN ANGELO
Regional Director, Monica Henry, P.E.
1200 S. Oak Dr., Ste C
San Angelo, TX 76901-3008
(325) 656-0550 Fax: (325) 656-0555

9 - MARO
Regional Director, David Van Sweld
6901 Saffle Ave.
San Antonio, TX 78209-2400
(210) 267-2700 Fax: (210) 267-2705

10 - HARLINGEN
Regional Director, Carmen R. Galicia
1000 Washington Ave.
Harlingen, TX 78550-2297
(956) 428-2843 Fax: (956) 428-2843

11 - AUSTIN
Regional Director, David Van Sweld
P.O. Box 1220.
Austin, TX 78765-0034
(512) 463-6000 Fax: (512) 463-6050

12 - BEAUMONT
Regional Director, Kathleen Sauceda
3702 Executive Pkwy.
Beaumont, TX 77705-2430
(409) 832-8130 Fax: (409) 832-8131

13 - SAN ANTONIO
Regional Director, Joseph Anderson
1235 S. Frio St.
San Antonio, TX 78205-3731
(210) 225-2200 Fax: (210) 225-2201

14 - CORPUS CHRISTI
Regional Director, Susan Cervantes
11200 Driscoll Blvd., Box 223
Corpus Christi, TX 78417-1234
(361) 825-2500 Fax: (361) 825-2501

TCEQ Areas & Regions

TCEQ Contact Information: (512) 239-3000 Fax: (512) 239-3011

For more information, visit the TCEQ website at www.tceq.texas.gov.

For customer service, visit the TCEQ website at www.tceq.texas.gov/connections.

TCEQ operates a 24-hour helpline. The helpline does not require a decision on the receipt of a permit, permit or denial, nor is it considered a decision. The helpline also offers assistance in the event of an emergency. For more information, visit the TCEQ website at www.tceq.texas.gov/connections.
Debris Site Certification

- Specific to each state
- Developed by FEMA in coordination with State Environmental and Historic Preservation Offices
- Must be signed by DEQ (TCEQ for Texas) and SHPO officials if you are establishing staging areas, burn areas or the like
Debris

- SHPO site certification is to protect archeological resources and potential affects to historic structures or districts from debris sites (burying debris, vibrations from heavily loaded trucks, etc.)
Simplifying Debris Projects

- Easiest: Documentation with Photos, volumes, receipts
  - Debris picked up and hauled to permitted landfill
    - Include landfill name, location and MSW permit #
- More Complex = Pre-Action Notifications to TCEQ or SHPO and maybe FEMA
  - Debris being staged then hauled to a landfill
  - Debris being burned, buried or disposed of in some other way = Caution!
  - Debris being reduced and used as mulch, careful
- Make sure that debris site certification forms, tipping fee tickets, manifests, etc. are included as documentation
Demolitions and Private Property Debris Removal

- Requires early EHP involvement
- Coordinated with other agencies, SHPO and tribes
- Must complete EHP review one property at a time
- But Why?
- Archeological concerns
- Endangered Species or Critical Habitats
Public Assistance Permanent Work Categories C through G

- Certain types of work triggers an in-depth EHP review before work should begin:
  - New construction beyond certain bounds
  - New ground disturbance in pristine areas
  - Removal of standing trees
  - Work on structures/features greater than 50 years old
  - Change in pre-disaster design, function or capacity to include hazard mitigation
  - Work in or adjacent to water, wetlands and coastal zones
Recover: Individual Assistance (IA)

IA programs provide assistance to individuals and families after a disaster for:

- Temporary Housing (e.g., placement of group housing sites)
- Permanent Housing (e.g., construction of housing)
- Access (e.g., roads and bridges)
- But Why?
- Floodplains, Archeology, E. J., NEPA, Historic, ESA, etc...
Mitigate:
Hazard Mitigation Assistance (HMA)

FEMA’s HMA grant programs include:

- Acquisition/demolition
- Elevation
- Drainage upgrades
- Wind retrofits
- Safe rooms
- Fuels reduction/wildfire mitigation
EHP Considerations – Here is why

- Endangered Species
- Cultural Resources
  - Archeological and Historic
- Air & Water Quality
- Fish and Wildlife as well as habitat
- Floodplains and Wetlands
- Coastal Zones
- Farmland - Geology

- Environmental Justice
- Land Use
- Hazardous Materials

These mirror Federal EHP laws and Executive Orders which FEMA must comply with.
FEMA’s EHP Review

May require consultation with resource and regulatory agencies, including:

- State Historic Preservation Office
- State Environmental Quality
- Tribal Governments
- US Fish and Wildlife Service
- US Army Corps of Engineers
Consequences of Non-Compliance

- Project delays
- Denial of funding
- De-obligation of funding
- Civil penalties
- Criminal Penalties
- Lawsuits – Jail Time
- Negative publicity
EHP Laws and Executive Orders: The basis for FEMA’s EHP Review

Endangered Species Act
National Historic Preservation Act
Migratory Bird Treaty Act
Clean Air Act
Clean Water Act
Farmland Protection Policy Act

NEPA

Executive Orders:
Environmental Justice
Floodplains
Wetlands
Coastal Barrier Resources Act
Coastal Zone Management Act
National Environmental Policy Act

- NEPA obligates federal agencies to consider potential impacts of their actions to the human environment *before* funding and starting an action

- Requires consideration of alternatives

- Ensures agencies provide opportunity for public input into the decision-making process
NEPA IS A DECISION-MAKING PROCESS

- Consider project alternatives
- Consider environmental consequences
- NEPA analysis or evaluation
- Share information with Agency and public
- Seek Agency and public input
- No requirement to avoid all environmental impacts

DECISION
The Four Types of NEPA Documentation

- Statutory Exclusion (STATEX)
- Categorical Exclusion (CATEX)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)
LEVELS OF NEPA REVIEW

- EIS
- EA
- CATEX
- STATEX only FEMA
NEPA Review: STATEX

- Stafford Act Section 316 allows an exception from NEPA review for certain FEMA actions
- Only applies to disaster recovery projects
- Emergency in nature that restore impacted sites back to pre-disaster conditions (function, capacity, like materials, footprint, etc.)
- Projects must still comply with all other laws and EOs
NEPA Review: CATEX

Actions that do not normally have a significant effect upon the environment and are excluded from further NEPA review. FEMA has 81 CATEXs to draw from…

These categories of actions usually do not require a full Environmental Assessment:

- Voluntary acquisition of properties for open space use and associated demolition.
- Installation/operation of utility/communication systems that use existing distribution systems.
- Demolition of structures in certain condition.
- Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility.
- Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure.

There are of course caveats to each of these!
Environmental Assessment (EA)

- If not a STATEX or a CATEX or if Extraordinary Circumstances exist.

- A **concise** public document that presents an evaluation of the potential environmental, historical, and societal impact of the proposed project and alternatives.

- Requires public notification, agency input, and public comment.

- Can require many months to complete

- Results in a Finding of No Significant Impacts (FONSI) or a Notice of Intent to prepare an EIS.
Extraordinary Circumstances

Extraordinary circumstances exist when the project has:

– Greater scope or size than normal for type of action;
– High level of public controversy;
– Potential for continued degradation of already poor environmental conditions;
– Use of unproven technology with potential for environmental risks;
– Special resources (i.e. endangered species or historic resources) at site;
– Presence of hazardous or toxic substances at levels that exceed standards;
– Potential to affect special status areas (i.e. wetlands or drinking water aquifers);
– Potential for adverse effects to public health and safety;
– Potential to violate a federal, state, tribal, or local environmental law; or
– Cumulative impacts when combined with past, present, and reasonably foreseeable future actions, even when individually these projects have no significant impacts
FEMA Projects that Require EAs

- Drainage/Channelization
- New Construction
- Wildfire Mitigation
- Temporary housing
NEPA Levels of Review: EIS

- Highest level of NEPA review
- In-depth analysis of large-scale, complex actions with significant environmental impacts
- Time-consuming, expensive document
  - Could take years to complete
- Rarely required by FEMA actions
- Can take several years

STATEX/CATEX 94%

EA 5% & EIS 1%
How does this apply to me?

- If you are an eligible applicant receiving public assistance via a Project Worksheet during a presidentially declared event…
  - DR-XXXX-TX (DR-4332-TX for examples)

- If you are applying for state-wide hazard mitigation assistance through the State EM…

- Your project will have to undergo some level of EHP review

- **As the sub-recipient of Federal disaster grant funding, you are obligated to adhere to the regulations as a condition of funding!**
What Do I need to do?

- Every FEMA grant funded project through the various programs will receive an EHP review which generates an official Record of Environmental Consideration (REC).

- The REC is not in the project worksheet or in the grant application. It should be part of the documentation returned to your entity in your grant approval and is a separate document.

- Ensuring you have a copy of the REC and that you understand the conditions found within the documents are the responsibility of the State and Sub-recipient.

- FEMA EHP staff are available at anytime during the process to answer and explain those Federal obligations for the EHP regulations, laws and Executive Orders.
Record of Environmental Consideration (REC)

- Has seven major sections
  - Project Description
  - NEPA Determination
  - Historic Preservation
  - Environmental Laws
  - Executive Orders
  - Extraordinary Circumstances
  - Conditions
The General REC Structure

<table>
<thead>
<tr>
<th>Environmental Law/Executive Order</th>
<th>Status</th>
<th>Description</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal Alk Resources Act (CARA)</td>
<td>Completed</td>
<td>Project is not on or contiguous to CARA buffer or otherwise protected area - Review concluded</td>
<td></td>
</tr>
<tr>
<td>Coastal Water Act (CWA)</td>
<td>Completed</td>
<td>Project would not affect any water of the U.S. - Review concluded</td>
<td></td>
</tr>
<tr>
<td>Coastal Zone Management Act (CZMA)</td>
<td>Completed</td>
<td>Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded</td>
<td></td>
</tr>
<tr>
<td>Executive Order 13568 - Floodplains</td>
<td>Completed</td>
<td>No effect on floodplain/flood levels and project outside floodplain - Review concluded</td>
<td></td>
</tr>
<tr>
<td>Executive Order 13980 - Wetlands</td>
<td>Completed</td>
<td>No effect on wetlands and project outside wetlands - Review concluded</td>
<td></td>
</tr>
</tbody>
</table>

R6 EHP Determination

Specific Law or E.O.

Status of EHP Review

Specific Comments
Project Description

- Requires an accurate and complete
  - Scope of Work
    • Including Proposed Mitigation
  - Pertinent Details
  - Location
  - Lat – Long

Comments: The applicant, the Kiamichi Electric Cooperative, Inc., LeFlore County, Oklahoma used force account labor, equipment and material to repair damages to the electric distribution system within the county. The repairs included the replacement of four (4) 35 foot Class 5 poles; one (1) 30 foot Class 6 pole; one (1) 20 foot Class 6 pole; two (2) 35 foot Class 7 poles; and miscellaneous electrical distribution hardware. The applicant is located at 966 SW Highway 2, Wilburton, Oklahoma (Latitude: 34.91037, Longitude: -95.32293).

The applicant proposes to complete the following mitigation to prevent future system damages by upgrading several poles. It is proposed to replace two (2) poles as follows: replace one (1) 35 foot Class 7 pole with a 35 foot Class 4 pole and replace one (1) 35 foot Class 7 pole with one (1) 35 foot Class 5 pole. This will increase the breaking load by 50 to 58 percent.

This project has been determined to be Categorically Excluded from the need to prepare either an Environmental Impact Statement or Environmental Assessment in accordance with 44 CFR Part 10.8(d)(2)(xi) and (xvi). Particular attention should be given to the project conditions before and during project implementation. Failure to comply with these conditions may jeopardize federal assistance including funding.

- whood1 - 05/12/2014 16:23:30 GMT
NEPA Determination

CATEX CATEGORIES

<table>
<thead>
<tr>
<th>Catex Category Code</th>
<th>Description</th>
<th>Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>xv</td>
<td>(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location;</td>
<td>Yes</td>
</tr>
<tr>
<td>xvi</td>
<td>(xvi) Improvements to existing facilities and the construction of small scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;</td>
<td>Yes</td>
</tr>
</tbody>
</table>

- Statutory Exclusion (SE)
- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)
Historic Preservation

- Historic properties
  45 years or older
- Ground disturbances

National Historic Preservation Act (NHPA)

Applicable executed Programmatic Agreement. Activity meets Programmatic Allowance (enter date and # in comments) - Review concluded

The scope of work has been reviewed and meets the criteria in Appendix A - Programmatic Allowances, Item Number V; Section A of FEMA's Programmatic Agreement (PA) dated January 12, 2004. In accordance with this PA, FEMA is not required to determine the National Register eligibility of properties where work
Conditions

- **Standard Conditions:**
  - Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
  - This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
  - If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

- **Special Conditions:**
  - Specific to the associated law or Executive Order.
Project Planning

The following factors affect the amount of time it takes to complete the EHP Review:

• Completeness of the project Scope of Work (SOW) provided to FEMA

• Complexity of the project – Required Permits

• Project location & the types of resources affected

• Whether consultation with SHPO, FWS, etc. (required under certain laws) is needed

• Whether additional studies are needed (EA, Biological Assessment, MOA)
Communication – Key Point

- Provide detailed project Statement of Work to FEMA

  - What work is being proposed, where will it take place, and how will it be carried out?
  
  - If we ask for it, we need it for a legitimate reason.

Changes in scope!

Must notify before construction starts!
EHP Review Tips

- Take EHP into account during project planning and budgeting.
- Easier to avoid or resolve issues if they are identified early.
- EHP issues can increase timeline.
- Scope of Work is clear, concise, and consistent throughout the documentation—What, Where and How!
- Provide all correspondence to and from agencies and make sure that all correspondence is less than 2 years old.
- Be aware of historic buildings or structures at or near project location.
- Public Notice – Must be taken into account.
- Permits
Questions
Contacts

Kevin Jaynes,
Regional Environmental Officer
FEMA Region 6

940-383-7224 Desk
940-230-5126 Cell

Kevin.Jaynes@fema.dhs.gov