



December 19, 2024

TO: WSDOT Project Development Engineers  
WSDOT State Environmental Managers

FROM: Mark Gaines, State Design Engineer *mg*  
Development Division Director

SUBJECT: Project Delivery Memo #24-01 – Environmental Compliance Assurance Policy

### **Purpose**

The purpose of this Project Delivery Memo is to revise the Environmental Compliance Assurance Procedure (ECAP) language within Washington State Department of Transportation (WSDOT) Design Manual Section 225.05(1) to be in alignment with revised ECAP policies and procedures.

### **Background**

RCW 47.85.030 requires WSDOT staff to notify the WSDOT Project Engineer (PE) when compliance with permit conditions or environmental regulations are not being met on WSDOT project activities. When an environmental non-compliance event occurs, WSDOT staff must notify regulatory agencies with jurisdiction over the non-compliant event, and the WSDOT PE must immediately order the contractor to stop all work that is causing non-compliance and implement measures necessary to bring the project into compliance with permits and regulations.

When environmental non-compliance occurs, RCW 47.85.040 requires WSDOT to implement ECAP to ensure appropriate agencies are notified, take actions to remedy non-compliance as soon as possible, and document lessons learned.

### **Direction**

For all projects advertised for construction on or after the date of this Project Delivery Memorandum, Design Manual Section 225.05(1) is revised to read as follows:

#### **225.05(1) Environmental Compliance During Design Phase**

[RCW 47.85.030\(3\)\(a\)](#) and [RCW 47.85.040\(4\)](#) require that WSDOT employees and consultant staff hired directly by WSDOT, report environmental non-compliance. The following details the procedures for all WSDOT projects to identify, correct and report on any environmental non-compliance event during any phase of project development process (e.g. pre-design, design, etc.). For purposes of this policy, an environmental non-compliance event is defined as actions that violate permits or authorizations, verbal or written agreements, laws, or regulations.

#### **225.05(1)(a) Environmental Compliance Assurance Policy**

Environmental commitments can be made at any point in project development and delivery (scoping, design, construction, etc.). WSDOT has a policy of continuous environmental commitment management throughout the life of a project (see [Agency Policy 1018](#)). The Environmental Compliance Assurance Policy (ECAP) applies to all WSDOT projects (including,

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but not limited to, Design-Bid-Build and all methods of Design-Build) and serves a multifaceted purpose. The primary purpose of ECAP is to help WSDOT quickly recognize, correct, and report any environmental non-compliance events at any time during project development and delivery. Reporting includes prompt notification to WSDOT management and regulatory agencies (see [Construction Manual](#) section SS 1-07.5 for Construction ECAP). The secondary purpose of ECAP is to help WSDOT learn from our collective experiences and continuously improve our environmental compliance performance agencywide.

Responsibilities for field work during design phase.

1. PE or designee:
  - o Step A - Takes the necessary actions so that appropriate environmental documentation and permits are obtained prior to field work during design
  - o Step B - Provides permits and communicates permit conditions to support groups performing field work (Geotechnical, Utilities, Environmental, etc.)
2. The Region/Modal/Megaprograms Environmental Manager (henceforth, referred to as Environmental Manager) or designee will help generate or make accessible the appropriate environmental documentation and permits.
3. Support Group / Field Crew is responsible for permit compliance, including the following:
  - o Confirming they have all the permits, and understanding of the permit conditions prior to beginning work
  - o Evaluating field operations, including access to specific locations, and developing work plans so that permit conditions are met (Temporary Erosion and Sediment Control (TESC), etc.)
  - o Recognizing and identifying non-compliance events.
  - o Notifying the PE, or Assistant PE when non-compliance events happen.

When non-compliance is suspected or known, it is the discoverer's responsibility to initiate the Notification and Resolution Process by promptly notifying the PE, or Assistant PE ([RCW 47.85.030\(3\)\(a\)](#)). This means that the discoverer does not have to wait for confirmed evidence of non-compliance, but rather should take actions as soon as they believe or have knowledge of potential non-compliance. The Environmental Manager, or designee, will serve as a resource to the PE, or Assistant PE, and give priority to addressing the non-compliance events. The PE, or Assistant PE, and Environmental Manager, or designee, shall work together on an appropriate response to avoid or minimize environmental damage.

### **225.05(1)(b) Notification and Resolution Process**

Take the following steps when a non-compliance event is suspected or known:

1. The person/support group who discovers an event must immediately notify the PE, or Assistant PE.
2. The PE, or Assistant PE must:
  - **Step A** —Immediately notify the field crew to suspend all work that is causing non-compliance ([RCW 47.85.030\(4\)](#)). In situations of suspected non-compliance,

suspend all work that is causing suspected non-compliance at PE's or Assistant PE's discretion.

- **Step B** – Immediately contact the Environmental Manager, or designee, who is responsible for confirming whether or not the event is non-compliant. If the event is compliant, stop the notification process and resume work activity. If not compliant, collaborate with the Environmental Manager, or designee, to determine the regulatory agencies with jurisdiction. The Environmental Manager, or designee, shall notify all regulatory agencies with jurisdiction ([RCW 47.85.030\(3\)\(b\)](#)). When necessary, the PE, or Assistant PE, and Environmental Manager, or designee, may consult relevant subject matter experts, to help determine non-compliance.

- **Step C** – Consult with the Environmental Manager, or designee, regarding response actions taken so far and any additional remediation actions that may be necessary.

- **Step D**– Highway Projects: Notify the appropriate Assistant Region Administrator or Engineering Manager for Design and the Assistant State Design Engineer assigned to that Region or Project.

- **Step E** – Additional notifications (see F.1 and F.2 below) from the PE, or Assistant PE, may be necessary. It is the responsibility of the Environmental Manager, or designee, to determine when the non-compliance event requires additional notifications. Additional notifications are required when the environmental non-compliance event results in, but not limited to:

- o A formal written/verbal enforcement action from a regulatory agency (may include but not limited to a notice of violation, monetary penalty, or warning letter indicating failure to correct non-compliance may result in further penalties);
- o Presents risk to public health or the environment; or
- o Creates a public controversy.

- **Step F.1** – Region Highway Projects: Notify the Region Administrator

- **Step F.2** –Megaprograms Highway Projects: Notify the Megaprograms' Program Administrator.

3. The Region Administrator or Megaprograms Program Administrator notifies the appropriate agency executives as warranted by the situation.

4. The Environmental Manager, or designee:

- **Step A** – Notify the Director of the Environmental Services Office (ESO) when the non-compliance event:

- o results in a formal written/verbal enforcement action from a regulatory agency;
- o presents risk to public health or the environment; or
- o creates a public controversy.

- **Step B** - Assist the PE, or Assistant PE, by determining if the event is non-compliant, determining the regulatory agencies with jurisdiction, notify all regulatory agencies with jurisdiction, recognizing the underlying cause that resulted in the non-compliance event, and determine how to prevent a reoccurrence of the

event. When necessary, consult relevant subject matter experts, to help determine non-compliance.

- **Step C** - In consultation with the PE, or Assistant PE, identify and obtain new or modified permits, approvals, or agreements as needed to rectify the non-compliance event.

5. The **Director of the ESO** notifies the ESO Compliance Solutions Branch Manager.

### **225.05(1)(c) Documentation**

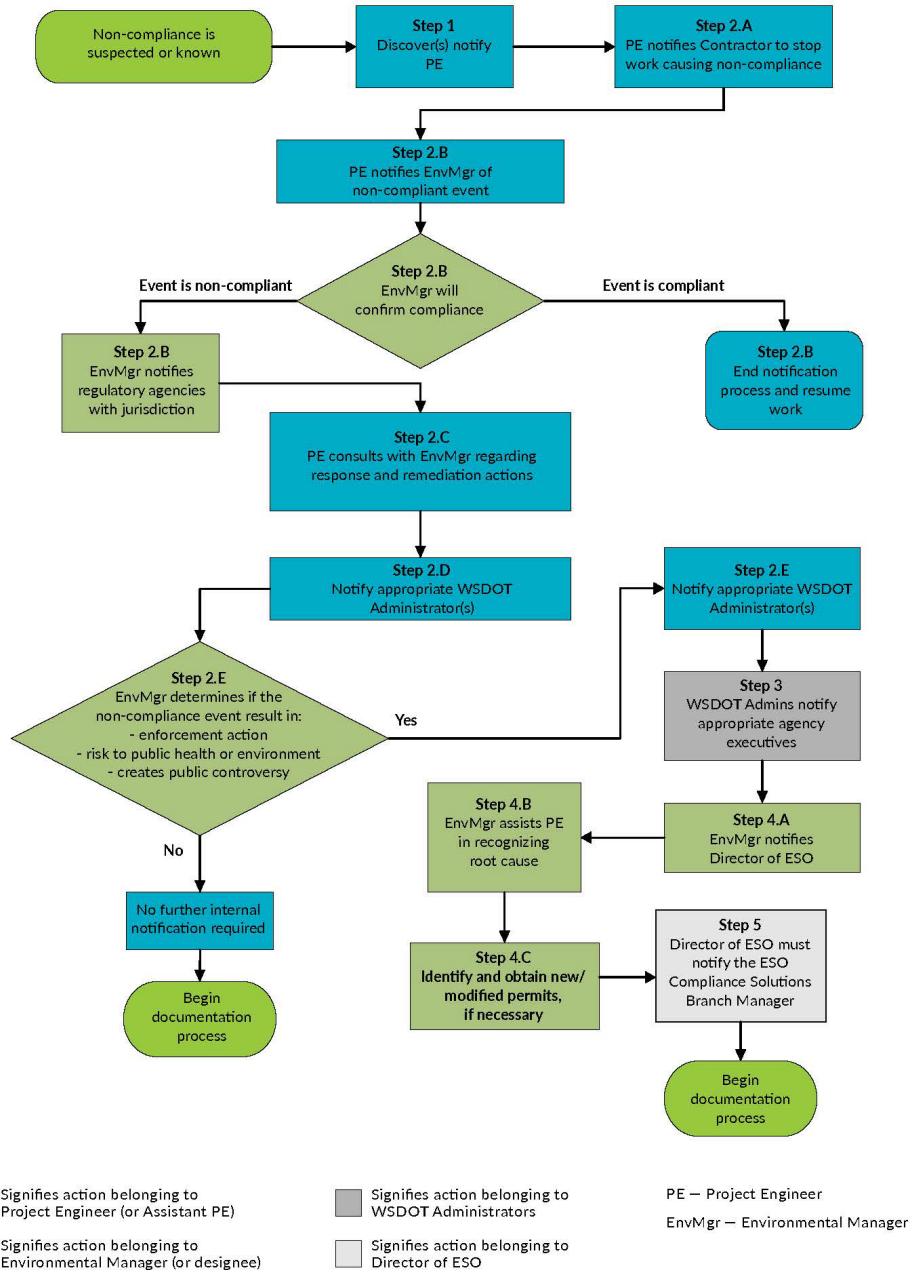
1. The PE, or Assistant PE, and the Environmental Manager, or designee, shall coordinate and prepare the appropriate responses to all regulatory agencies with jurisdiction. The responses shall include documentation about the non-compliance event and how it was recognized and rectified.

2. The Environmental Manager, or designee, with assistance from the PE, or Assistant PE, shall record the details of the non-compliance event in the WSDOT Commitment Tracking System (CTS) (per [RCW 47.85.040](#)), including but not limited to:

- Project Name, location, and the name of the PE.
- Date of event.
- Location(s) on the project where the non-compliance event occurred.
- The type of work and the underlying root cause(s) that resulted in the non-compliance event.
- The environmental, permit(s), agreement(s), law(s), or regulation(s), for which the environmental commitments were not met.
- Description of how the non-compliance event was recognized, rectified, the lessons learned, and how the event could have been prevented.
- Which regulatory agencies and staff were notified, including dates of notification and any tracking numbers provided.
- Whether or not regulatory agency staff conducted a site review in response to the notification and issued an inspection report.
- Whether or not regulatory agency(s) issued enforcement actions (may include but not limited to a notice of violation, monetary penalty, or warning letter indicating failure to correct non-compliance may result in further penalties) in response to the non-compliance event.

3. The ESO, in coordination with the Regional/Modal/Megaprograms Environmental Managers, shall produce a yearly report of all written enforcement actions (may include but not limited to a notice of violation, monetary penalty, or warning letter) received from regulatory agencies to the Washington State Legislature (per [RCW 47.85.040](#)).

### ECAP Notification and Resolution Process Workflow



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**Questions**

For questions or information on how to implement this Project Delivery Memo, contact Brian Podobnik with the HQ Environmental Services Office.

MG: km, bp

cc: Regional Administrators

Assistant State Design Engineers

Omar Jepperson - SR 520 and AWW Program Administrator

Frank Green - IBR WA Assistant Program Administrator

John H White - Puget Sound Gateway Program Administrator

Lisa Hodgson - I-405/SR 167 Program Administrator

Steve Nevey – Assistant Secretary WSF

Tim Rydholm - Deputy Director, Capital Program Development & Management Division