NEPA ASSIGNMENT AND STREAMLINING

AASHTO 2014 Air Quality Peer Exchange
Presentation Topics

1. NEPA Assignment
2. AQ and Assignment
3. Streamlining
4. Challenges
5. Contact Info
What is NEPA Assignment?

- Formal, legal assignment of responsibilities from federal to state government which may include:
  - NEPA responsibilities (some or all projects)
  - Responsibilities for consultation & coordination under other federal environmental laws

- FHWA maintains:
  - Government to government consultation with tribes
  - Engineering decisions
  - Air quality conformity determinations
  - US DOT responsibilities for statewide and metropolitan planning

- Goal:
  - Streamline project delivery
Streamlining comes from eliminating review layer, not from shortcutting legal requirements

- TxDOT required to comply with all FHWA NEPA regulations, policies, and formal guidance
  - TxDOT solely responsible & solely liable for the responsibilities it assumes
  - TxDOT will defend all claims in Federal court

- Penalty for not following requirements ranges from loss of federal funding for specific project to loss of NEPA Assignment
Checks and Balances

- FHWA Assignment Program Audits
  - Follow submission of TxDOT self-assessments
  - Twice yearly for two years, annually thereafter
  - FHWA invites stakeholders to participate
  - Audit results published in Federal Register
  - Annual Report to Congress by U.S. Transportation Secretary
State Comments – Finalizing RTC

Application Submittal – May 2014

Public comment at federal level

Negotiate and sign MOU – July 2014

Implement with continuous improvement
## AQ Handbook – Project Level Compliance

<table>
<thead>
<tr>
<th>AQ Analysis</th>
<th>Statue/Law</th>
<th>Implementing Rule or Guidance</th>
<th>Procedural or Substantive</th>
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<tbody>
<tr>
<td>Conformity</td>
<td>CAA - Section 7506(c)</td>
<td>40 CFR 93, 30 TAC 114.260</td>
<td>Substantive</td>
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<tr>
<td>Hot-Spots</td>
<td>CAA - Section 7506(c)</td>
<td>40 CFR 93, 30 TAC 114.260</td>
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<tr>
<td>CO TAQA</td>
<td>NEPA - 42 USC 4332</td>
<td>FHWA Technical Advisory T 6640.8A</td>
<td>Substantive*</td>
</tr>
<tr>
<td>MSAT</td>
<td>NEPA - 42 USC 4332</td>
<td>Interim Guidance Update On Mobile Source Air Toxic Analysis In NEPA Documents (12/12)</td>
<td>Procedural</td>
</tr>
<tr>
<td>CMP</td>
<td>Transportation Code - 23 USC 134(k)(3) and 134(m)</td>
<td>23 CFR 450.320</td>
<td>Substantive</td>
</tr>
<tr>
<td>Construction Emissions</td>
<td>NEPA - 42 USC 4332</td>
<td>FHWA Technical Advisory T 6640.8A</td>
<td>Procedural</td>
</tr>
</tbody>
</table>

* Even though this is a NEPA analysis, and NEPA is a procedural law, the CAA does not allow for an exceedance of the NAAQS.

## Procedural vs. Substantive
- **Procedural requirements only require that you go through a process to comply**
- **Substantive requirements dictate specific requirements or thresholds to comply**
Note that there is a specific report form or technical report required for each air quality element except CMP and Construction Emissions.

The SOP for Air Quality Statements contains disclosure language for each of the air quality analyses for the environmental review document or project file.
## Nonattainment and Maintenance Area (NA/MA) in Texas

<table>
<thead>
<tr>
<th>Area Name</th>
<th>Counties</th>
<th>Pollutant</th>
<th>Classification</th>
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</thead>
<tbody>
<tr>
<td>Houston-Galveston-Brazoria (HGB)</td>
<td>Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller</td>
<td>Ozone</td>
<td>Marginal Nonattainment</td>
</tr>
<tr>
<td>Dallas/Fort Worth (DFW)</td>
<td>Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwell, Wise</td>
<td>Ozone</td>
<td>Moderate Nonattainment</td>
</tr>
<tr>
<td>El Paso</td>
<td>Portion of El Paso</td>
<td>PM$_{10}$</td>
<td>Moderate Nonattainment</td>
</tr>
<tr>
<td>El Paso</td>
<td>Portion of El Paso</td>
<td>CO</td>
<td>Attainment-Maintenance</td>
</tr>
<tr>
<td>Collin County</td>
<td>Portion of Collin County</td>
<td>Lead</td>
<td>Nonattainment</td>
</tr>
</tbody>
</table>

- This table is only showing NA/MAs for the 2008 ozone NAAQS since transportation conformity no longer applies to the 1997 ozone NAAQS.
- Lead is not a transportation related pollutant.
Project Level Conformity

- FHWA/FTA must make the final project level conformity determination

- The conformity report should be coordinated within 60 days of the project decision

- NO TXDOT PROJECT DECISION CAN LEGALLY BE MADE FOR A PROJECT SUBJECT TO CONFORMITY W/O A PROJECT LEVEL CONFORMITY DETERMINATION FROM FHWA (i.e., conformity report)
Streamlining

- NEPA Assignment
  - Reduce 30 day review period for each round with FHWA
  - Electronic Administrative Record, Risk Assessments/Checklists

- Emission rate look up tables

- Cumulative Impacts
  - TCEQ emission trend reports by county
  - EPA NAAQS future projections
  - Existing CAA control strategies as mitigation

- Document-less CE

- CO Threshold for TAQA – 140,000 AADT
  - Haven’t exceeded NAAQS on projects above 300,000 AADT

- PM10- Worst case and EPA case-by-case decisions
Streamlining – Document-less CE

Typical Annual # of Projects Reviewed

- CE 1100 (600 no document)
- EA/EIS 75 (1-7 EIS)

Document-less CE

- **STOP** Needless work
- Reduce trivial error
- Make sound decisions
Challenges

- Project consistency throughout NEPA
- Expectations
- New regulations and tools
- Future forecasting
- Results of early assignment audits
- Change management – Parallel processing
More Information

- **Compliance Toolkits**
    - Some AQ still pending FHWA Texas concurrence

- **NEPA Assignment**