



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

All Environmental Laws, Regulations, and Policies Remain

- 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

Path to Assignment

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

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

* 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

New Guidance

Air Quality Toolkit

- AQ Handbook
- AQ SOPs, Document Standards and Review Standards

SOPs

- Conformity
- Hot-Spots
- CO TAQA
- MSAT Analysis
- CMP
- Construction Emissions
- Air Quality Statements

Document Standards

- Conformity Report Form
- Hot-Spot Technical Report
- CO TAQA Technical Report
- Quantitative MSAT Technical Report
- Air Quality Statements

Review Standards

- Conformity Report Form
- Hot-Spot Technical Report
- CO TAQA Technical Report
- Quantitative MSAT Technical Report
- Air Quality Statements

- 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.

Conformity Overview – NA/MA

Nonattainment and Maintenance Area (NA/MA) in Texas			
Area Name	Counties	Pollutant	Classification
Houston-Galveston-Brazoria (HGB)	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller	Ozone	Marginal Nonattainment
Dallas/Fort Worth (DFW)	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwell, Wise	Ozone	Moderate Nonattainment
El Paso	Portion of El Paso	PM ₁₀	Moderate Nonattainment
El Paso	Portion of El Paso	CO	Attainment-Maintenance
Collin County	Portion of Collin County	Lead	Nonattainment

- 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

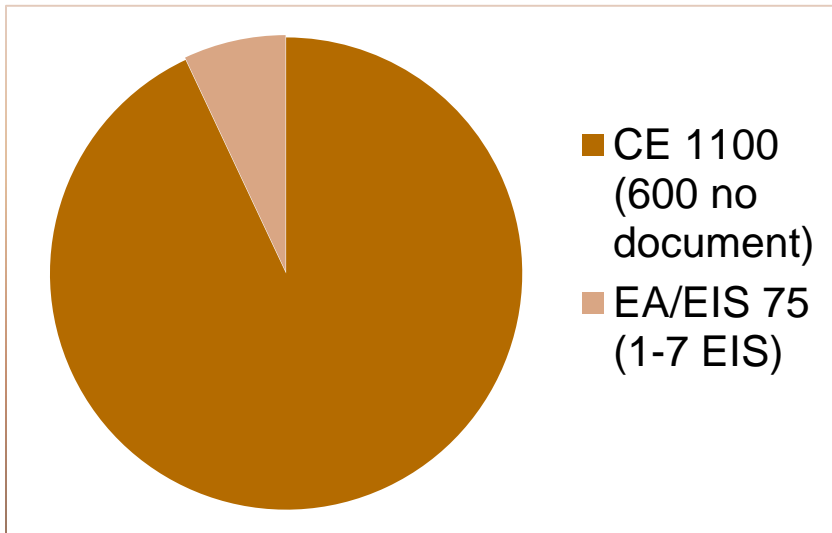
- Document-less CE

- 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



Document-less CE

-  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

■ Compliance Toolkits

- All: <http://www.txdot.gov/inside-txdot/division/environmental/compliance-toolkits.html>
- AQ: <http://www.txdot.gov/inside-txdot/division/environmental/compliance-toolkits/air-quality.html>
 - Some AQ still pending FHWA Texas concurrence



■ NEPA Assignment

- Draft application: <http://ftp.dot.state.tx.us/pub/txdot-info/env/toolkit/final-draft-application-030614.pdf>
- General Info: <http://www.txdot.gov/inside-txdot/division/environmental/programs/nepa-assignment.html>