



CITIZENS FOR SENSIBLE TRANSPORTATION PLANNING
811 W 24th Ave Spokane WA 99203 www.walkspokane.org

We would like to take this opportunity to submit additional comments (supplementing our original comments submitted November 30, 2009) regarding the Washington State Department of Transportation's US 395 North Spokane Corridor Francis Avenue to Farwell Road Southbound Lanes Application to the TIGER Discretionary Grants Program. WSDOT submitted their application in September, 2009.

In September of 2009, the FHWA issued a memorandum on the Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA Documents. The purpose of this memorandum was to update their February 2006 interim guidance that advises Federal Highway (FHWA) Division offices on when and how to analyze mobile source air toxics (MSAT) in the National Environmental Policy Act (NEPA) process for highways.

Quoting from the document:

“Controlling air toxic emissions became a national priority with the passage of the Clean Air Act Amendments (CAAA) of 1990, whereby Congress mandated that the U.S. Environmental Protection Agency (EPA) regulate 188 air toxics, also known as hazardous air pollutants. The EPA has assessed this expansive list in their latest rule on the Control of Hazardous Air Pollutants from Mobile Sources (Federal Register, Vol. 72, No. 37, page 8430, February 26, 2007) and identified a group of 93 compounds emitted from mobile sources that are listed in their Integrated Risk Information System (IRIS) (<http://www.epa.gov/ncea/iris/index.html>). In addition, EPA identified seven compounds with significant contributions from mobile sources that are among the national and regional-scale cancer risk drivers from their 1999 National Air Toxics Assessment (NATA) (<http://www.epa.gov/ttn/atw/nata1999/>). These are acrolein, benzene, 1,3-butadiene, diesel particulate matter plus diesel exhaust organic gases (diesel PM), formaldehyde, naphthalene, and polycyclic organic matter. While FHWA considers these the priority mobile source air toxics, the list is subject to change and may be adjusted in consideration of future EPA rules.

Air toxics analysis is a continuing area of research. While much work has been done to assess the overall health risk of air toxics, many questions remain unanswered. In particular, the tools and techniques for assessing project-specific health outcomes as a result of lifetime MSAT exposure remain limited. These limitations impede the ability to evaluate how the potential health risks posed by MSAT exposure should be factored into project-level decision-making within the context of the National Environmental Policy Act (NEPA).

Nonetheless, air toxics concerns continue to be raised on highway projects during the NEPA process. Even as the science emerges, we are duly expected by the

public and other agencies to address MSAT impacts in our environmental documents. The FHWA, EPA, the Health Effects Institute, and others have funded and conducted research studies to try to more clearly define potential risks from MSAT emissions associated with highway projects. The FHWA will continue to monitor the developing research in this emerging field.

The NEPA requires, to the fullest extent possible, that the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals. The NEPA also requires Federal agencies to use an interdisciplinary approach in planning and decision-making for any action that adversely impacts the environment. The NEPA requires and FHWA is committed to the examination and avoidance of potential impacts to the natural and human environment when considering approval of proposed transportation projects. In addition to evaluating the potential environmental effects, we must also take into account the need for safe and efficient transportation in reaching a decision that is in the best overall public interest. The FHWA policies and procedures for implementing NEPA is prescribed by regulation in 23 CFR § 771”.

The FHWA developed a tiered approach for analyzing MSAT in NEPA documents, depending on specific project circumstances. The FHWA has identified three levels of analysis:

1. No analysis for projects with no potential for meaningful MSAT effects;
2. Qualitative analysis for projects with low potential MSAT effects; or
3. Quantitative analysis to differentiate alternatives for projects with higher potential MSAT effects.

For Category 3 level analyses, the Guidance document says “*This category includes projects that have the potential for meaningful differences in MSAT emissions among project alternatives. We expect a limited number of projects to meet this two-pronged test. To fall into this category, a project must:*

Create or significantly alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location; or

Create new or add significant capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the AADT is projected to be in the range of 140,000 to 150,000² or greater by the design year;

And also

Proposed to be located in proximity to populated areas.”

The NSC project creates 10 miles of a major intermodal freeway (up to eight lanes wide) within an urban environment and triples the freeway traffic lanes in Spokane’s East

Central Neighborhood. The NSC project clearly falls within the 3rd level of analysis that requires a quantitative analysis of the MSAT effects.

Neither the Final Environmental Impact Statement (FEIS), nor its Final Supplemental Environmental Impact Statement (FSEIS), for the US-395 project addressed these public health issues in any fashion. On page 24 of the current TIGER application, WSDOT says the project's NEPA requirement was met with the FEIS and FSEIS. Given the FHWA's newest MSAT guidance, this can no longer be the case.

The award of any discretionary grant, loan, loan guarantee or other funding requires the federal agency granting the assistance to comply with NEPA. NEPA compliance will be required for projects involving federal funds, even if the project has already completed environmental review under an earlier version of NEPA or an equivalent statewide program.

Washington State Department of Transportation's recent application for federal TIGER Discretionary Grant funding for the North Spokane Corridor should not be considered for funding given its failure to follow the most current FHWA guidance for NEPA conformance identified above.

Federal code outlining the SEIS process for NEPA can be found in 23 C.F.R. §771.130.

“23 C.F.R. §771.130 Supplemental environmental impact statements.

- a. *A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. **An EIS shall be supplemented whenever the Administration determines that:***
 1. *Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or*
 2. ***New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.***

As the FHWA itself has issued new Guidance regarding when and how to analyze the emerging threat of mobile source air toxics in the NEPA process for highways, this must qualify as being “relevant to environmental concerns” that needs to be adequately addressed through the NEPA process. In January of 2006, Citizens for Sensible Transportation Planning petitioned the FHWA to conduct a supplemental environmental impact statement to address the MSAT concerns. FHWA officials declined to conduct the necessary studies. WSDOT must be compelled to evaluate these MSAT concerns before they can receive any additional federal funding.