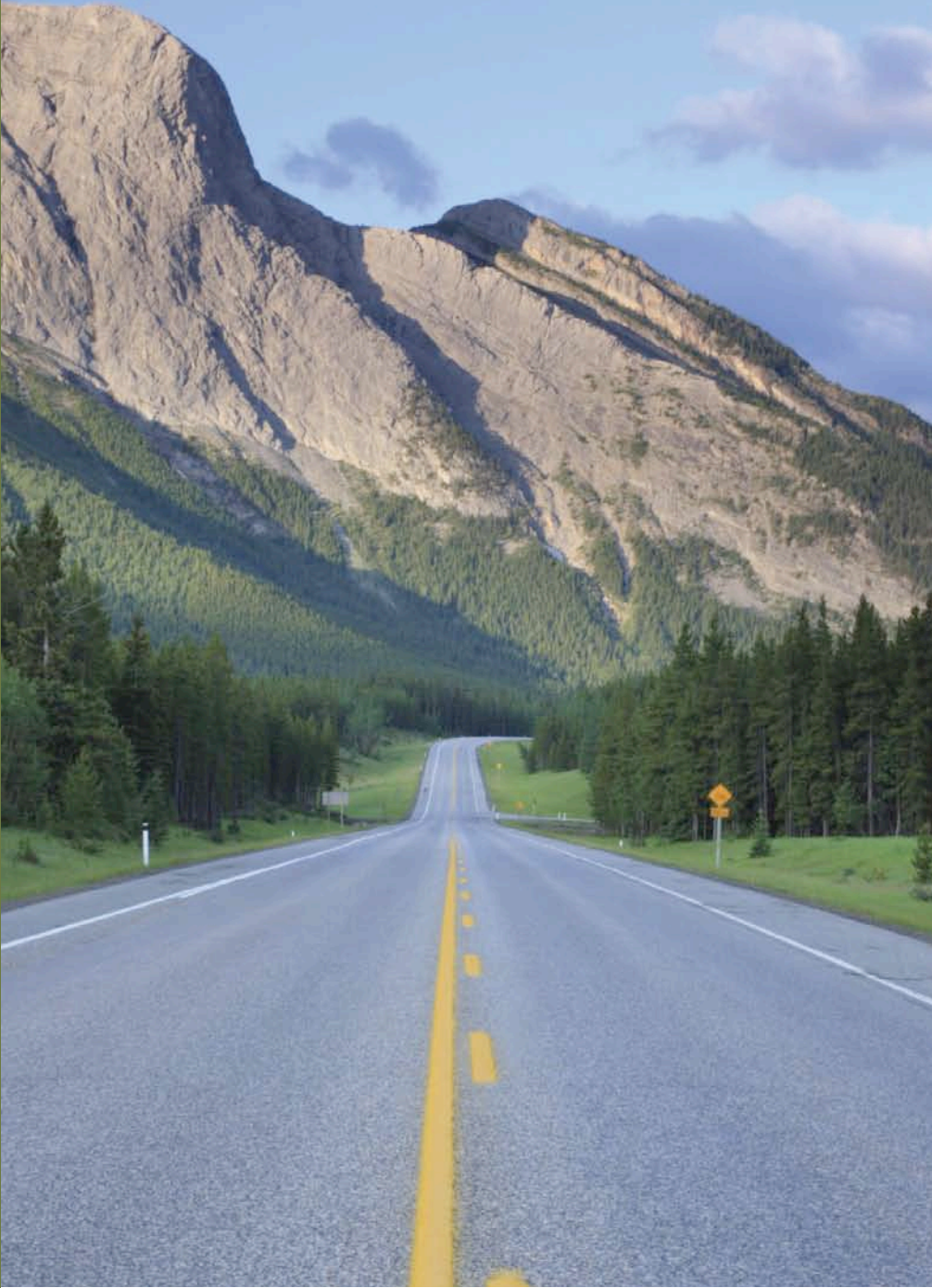


# Environmental & Regulatory Advocacy Program





## ARTBA's Environmental & Regulatory Advocacy Program

When it comes to federal regulatory issues that could affect the transportation development industry, the American Road & Transportation Builders Association (ARTBA) has your back!

While you conduct your business at home, ARTBA's experienced professional staff in Washington, D.C., is continually monitoring and proactively looking out for your interests—before federal agencies and in the courts.

We cover the spectrum, from workplace safety, environmental regulation and compliance concerning stormwater, wetlands, air and water quality to business issues involving taxes, paperwork, health care reform and disadvantaged businesses.

This service is part of ARTBA's core mission of developing and protecting the transportation construction market and our aim to help you operate your firm more safely, efficiently and profitably.

### BY THE NUMBERS:

In the past five years, on environmental and regulatory issues alone, ARTBA has:

- Filed comments more than 100 times.
- Had 150 meetings with congressional offices.
- Submitted testimony to congressional hearings 25 times.
- Participated in 15 federal agency hearings.

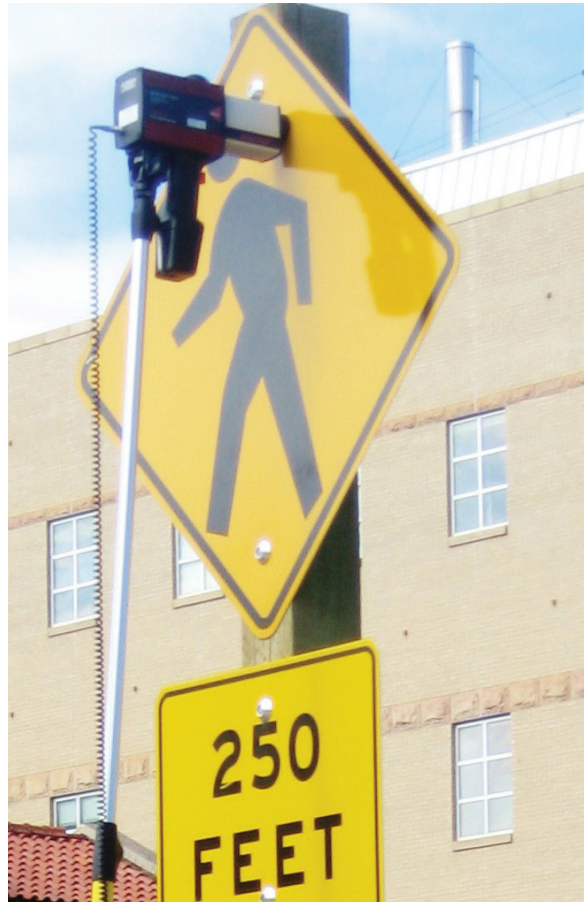
## REGULATORY REPRESENTATION

In just the past five years alone, ARTBA has filed detailed comments more than 100 times presenting the industry's views before the U.S. Environmental Protection Agency (EPA), U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Occupational Safety & Health Administration (OSHA), and U.S. Army Corps of Engineers.

Below is a summary of the major regulatory proposals in which ARTBA has been actively engaged on the industry's behalf:

**Temporary Traffic Control:** Worked with FHWA officials through written comments and meetings in support of a plan requiring use of more effective temporary traffic control devices. The final rule included ARTBA-advocated provisions requiring DOTs to develop guidelines for payment for safety devices, standardized procedures for employing uniformed law enforcement officers in work zones, maintenance of quality traffic control devices and considerations for separating workers from motorized traffic.

**Road Sign Retroreflectivity:** Expressed to FHWA on multiple occasions support for retroreflective standards on roadway signs, explaining the need for federal government funding to local agencies for compliance, and protection from legal liability when funds are not sufficient to replace all signs.





**Crane Rule:** Actively participated—through testimony and meetings—in OSHA’s negotiated rulemaking committee for the 2009 promulgated regulation for cranes and derricks. ARTBA’s efforts helped improve crane safety in a manner that was workable and is now largely accepted by the transportation construction industry.

**Construction Confined Spaces Rule:** Warned OSHA that its proposed confined space rule was too cumbersome and complicated for the construction industry, contained a cumbersome and complicated classification system, and placed undue compliance burdens on contractors.

**Disadvantaged Business Enterprise (DBE) Program:** Filed comments with U.S. DOT and participated in numerous national conferences, meetings with members of Congress and roundtables with federal and state officials to share industry concerns about the implementation of DBE regulations. ARTBA highlighted the ways

in which the DBE program has diverged from the industry’s customary business practices without helping nurture the success of these emerging businesses.

**Hours of Service:** Steadfastly advocated for more than a decade for a transportation construction industry exemption for its short-haul drivers from the federal rules limiting the on-duty time for motor carrier operators. ARTBA has regularly filed comments with FMCSA and raised the issue at U.S. DOT regulatory review meetings.

**Project Delivery:** Met frequently with FHWA construction officials to share the industry's view on new procurement and project delivery methods. ARTBA managed international conferences on this topic in 2011 and 2009 on the agency's behalf. At the request of the FHWA administrator, ARTBA also co-chaired a federal-state-industry task force on accelerating highway project delivery and hosted several of its meetings.

**Ethics & Compliance:** At the invitation of the U.S. DOT Office of the Inspector General, ARTBA members have served as invited speakers and participants in several editions of the biennial National Conference on Fraud Awareness in Transportation Construction Programs. The association has also participated in FHWA work groups that have developed model ethics and compliance policies for use by ARTBA member-companies.

**Proprietary Products:** Partnering with state transportation officials and with a focus on promoting innovation, ARTBA organized meetings with FHWA and met with congressional staff to advocate for more flexibility in introducing patented and proprietary products into the transportation construction marketplace.

ARTBA maintains strong relationships with the relevant federal agencies and involves members with special expertise. Each year, we provide forums for industry executives to meet face-to-face with top federal officials to explain the “real world” business impacts of proposed regulations. For example, ARTBA member Jeffrey Parisi, president of Wisconsin-based Parisi Construction Company, was the only transportation executive to participate in an EPA work group gauging the impacts on small business from potential changes to storm water regulations. He urged any future proposals affecting transportation projects be flexible and adequately address liability and project cost issues.



Jeffrey Parisi



**Particulate Matter & Ozone Standards:** Filed nearly 20 sets of comments with the EPA warning the agency not to set Clean Air Act (CAA) standards at such a strict level that they would jeopardize highway funds for hundreds of counties across the U.S. and limit the ability of states to reduce traffic congestion and improve air quality.

**Greenhouse Gas Emissions:** Argued to EPA multiple times that CAA is not the appropriate vehicle for dealing with “greenhouse gas” emissions. Such an approach would literally send the whole nation into CAA “non-compliance.” The result would be self-defeating: delaying transportation improvements vital to reducing transportation’s carbon footprint.

**Fuel Economy Standards:** Expressed the industry’s view that while better fuel economy and cleaner vehicles are commendable objectives, stronger standards should include a mechanism to supplement lost Highway Trust Fund revenues resulting from decreased fuel purchases.

**Diesel Emissions Rules:** Filed more than 10 sets of comments with the EPA and state environmental agencies over whether or not mandatory diesel retrofits should be required for all off-road construction equipment. ARTBA pointed out that EPA and state-level proposals as written would not only unfairly impact small and medium sized construction firms, but also weren’t even technologically feasible.

**Stormwater:** Called on EPA to ensure new stormwater rules ensure the flexibility necessary to allow transportation improvements to be built without unnecessary delays because rules for concentrated development projects, such as malls or new home developments, cannot be applied to the fundamentally different transportation construction process.

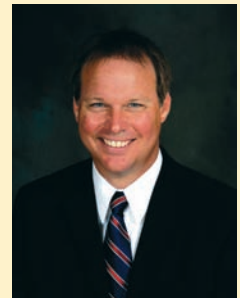
**Wetlands:** Frequently submitted comments to the EPA and Army Corps of Engineers to limit regulatory overreach in wetlands permitting. Roadside ditches, a necessary part of any transportation project, should not be treated as “waters of the United States” and permitted in the same manner as a stream or river, ARTBA said.

**National Environmental Policy Act:** Presented a number of practical recommendations to the EPA and the President’s Council on Environmental Quality reduce the time involved in the National Environmental Policy Act (NEPA) review and approval process, which can take up to 19 years on some transportation projects.

**Highway & Transit Law:** As with every multi-year reauthorization bill, ARTBA aggressively monitored the implementation of the SAFETEA-LU, submitting comments 12 times (planning, historic preservation, permitting and NEPA delegation) to the U.S. DOT to ensure the law was implemented as intended to maximize the transportation construction activity.



Long Island Contractors’ Association Executive Marc Herbst represented ARTBA at a March 2011 U.S. DOT hearing called to discuss the impact of federal regulations on transportation projects. During department-wide regulatory reviews in 2011 and 2005, ARTBA was the only construction-related association to appear at public meetings and communicate the industry’s regulatory priorities to senior federal transportation officials.



Marc Herbst



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## LEGISLATION & COALITION BUILDING

ARTBA regularly plays a key role in supporting coalition activities with other national associations that are aimed at advancing shared public policy goals.

In 2010, ARTBA worked with organizations from the agriculture, homebuilding and manufacturing sectors to help beat back proposed congressional legislation that would have federalized the nation's waterways and led to additional delays in delivering transportation projects.

The association also worked during 2010 with a wide array of transportation organizations to protect infrastructure funding from legislation that would have diverted revenues generated from transportation system use to non-transportation causes.

Over the years, ARTBA has also been a leader in suggesting reforms to the wetlands permitting and NEPA review and approval processes. These efforts are essential in reducing the amount of time it takes for essential transportation improvements to be completed.

ARTBA has produced award-winning publications that have helped educate the public and elected officials about transportation and the environment "good news" stories, and highlighted highway, bridge, airport, tunnel and transit projects from across the nation that are setting new standards for environmental innovation, wildlife protection, energy savings and wetlands restoration.



## A \$50 BILLION SUCCESS STORY

As the industry's primary legal advocate since 1993, ARTBA has been involved in numerous cases that threatened transportation projects. The association sued the EPA over proposed expansion of wetlands and clean air regulations because they threatened the market. And we won!

In total, ARTBA's efforts have allowed nearly \$50 billion in approved—yet challenged—state, regional and local transportation projects and plans to move forward.

At the dawn of the 21<sup>st</sup> century, ARTBA launched the “Advocates for Safe & Efficient Transportation” (ASET), a national litigation alliance of transportation construction and home building industries, and labor unions that successfully battled professional environmental groups intent on stopping or delaying previously approved highway projects. Among ARTBA's legal victories:

- Preventing no-growth groups from using the CAA transportation conformity process to delay or stop state and local highway projects.
- Successfully challenging EPA and the U.S. Army Corps of Engineers attempts to unlawfully expand federal wetlands jurisdiction. By limiting the jurisdiction of these agencies, ARTBA helped to allow numerous construction projects to proceed without unnecessary federal intervention.
- Obtaining the first-ever federal court decision in 2000 which prevented the Sierra Club and its allies from challenging a regional transportation plan under the “citizen's suit” provision of the CAA. The provision had been used routinely to file cases blocking highway projects across the country. It had also allowed them to collect attorney's fees if successful. These fees were then used to fund additional anti-road litigation.

“ARTBA is one of the strongest industry voices—especially in environmental and regulatory actions.”

-“Better Roads”

- Beating back a proposed injunction to stop dozens of road projects in California, setting potential legal precedent for other similar cases across the nation.
- Creating legal pressure that sped up a court settlement in Atlanta, Georgia, allowing dozens of highway projects to move forward.
- Setting legal precedent guaranteeing construction industry associations a right to a seat at the table in environmentally-based litigation seeking to stop regional, state or local transportation plans.

## EXPANDED LEGAL ADVOCACY

More recently, the association's Board of Directors expanded the scope of the industry's litigation efforts. ARTBA is the only organization in the U.S. that exclusively focuses legal activities on helping ensure that approved state, regional and local transportation plans and projects move forward expeditiously. It monitors and becomes involved in environmental and business issues that have the potential to impact the planning, design and/or construction of transportation infrastructure projects.



ARTBA recognizes that a successful legal advocacy and education program must be implemented in a variety of ways. Its effectiveness on behalf of the transportation design and construction industry derives from a comprehensive, five-part program that includes:

1. Initiating litigation as a party plaintiff, taking on difficult cases that others might be reluctant to file or that no single organization or business could fight alone head-to-head against government agencies and/or well-funded project opponents.



Photo courtesy of APTA

2. Submitting “amicus curiae” briefs to present compelling legal arguments and policy perspectives that often surpass the argumentation that lawyers for the involved parties are able to provide. An ARTBA “friend-of-the-court” brief serves as a valuable tool in persuading courts about the integrity of the transportation planning and approval process and the resulting safety, mobility and economic benefits that come from transportation improvement projects.
3. Filing detailed issue briefs and public comments with federal and state regulatory agencies on environmental and business-related issues that might adversely impact transportation development. ARTBA ensures that a reasoned voice is heard on behalf of transportation development proponents.
4. Executing media outreach programs to ensure that the views of transportation advocates are accurately portrayed in the general, business and construction media.
5. Producing reports and publications to keep its members, the legal community and the media informed of litigation and regulatory developments that impact transportation development in the United States.

ARTBA’s environmental and regulatory program activities get results for its members. Learn more about how we can help your firm by contacting ARTBA Vice President of Environmental & Regulatory Affairs Nick Goldstein at **202-289-4434** or **[ngoldstein@artba.org](mailto:ngoldstein@artba.org)**.



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