August 26, 2019

The Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0002


On behalf of the 8,000 members of the American Road & Transportation Builders Association (ARTBA), I respectfully offer comments on the Council on Environmental Quality’s (CEQ) draft guidance regarding the consideration of greenhouse gas emission (GHGs) and the effects of climate change in National Environmental Policy Act (NEPA) Reviews.

ARTBA’s membership includes private and public sector representatives that are involved in the planning, designing, construction and maintenance of the nation’s roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than $500 billion annually in U.S. economic activity and sustains more than 4 million American jobs.

Introduction

ARTBA members must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific federal burdens that can and should be alleviated. Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by NEPA. ARTBA supports NEPA and realizes it is an integral component of the transportation planning process. Many, if not all, of the significant environmental achievements of the transportation community and ARTBA members would not be possible without NEPA.

ARTBA recognizes that regulations play a vital role in protecting the public interest in the transportation project review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation’s transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process oriented and have essentially found a path for regulatory requirements to be fulfilled in a smarter and more efficient manner.

According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project, from the identification of the project need to the start of construction. According to the same report, it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally funded highway
project. This process involves dozens of overlapping state and federal laws, including NEPA, state NEPA equivalents, wetland permits, endangered species implementation, clean air conformity, etc. Often times these procedures mask disparate agendas or, at a minimum, demonstrate an institutional lack of interagency coordination that results in unnecessary delays.

There has been a general recognition, in both the legislative and regulatory arenas, that the NEPA review process is simply too long. On the legislative front, the past three surface transportation reauthorization laws contained a number of provisions specifically designed to reduce the amount of delay in the NEPA process, which are currently being implemented through the regulatory process. Further, CEQ is currently in the process of modernizing the NEPA review process with an eye toward reducing unnecessary delays.

**NEPA and GHG Emissions**

NEPA was designed to deal with the present, not the future, and was designed to account for the direct impacts of federal actions. For transportation projects, this means tangible effects on the environment, such as removal of wetlands and impacts to wildlife. Further, NEPA was passed in 1969—long before GHGs and climate change were being looked at from a regulatory perspective. The statute does not contain the proper regulatory mechanism for assessing GHGs and climate change. Climate change impacts, however, are different from the impacts traditionally covered by NEPA analyses. They are more speculative, harder to quantify, and may not be realized until long after a project is completed.

Expanding the scope of NEPA to cover GHGs and the effects of climate change, if not done correctly, could run counter to all of the aforementioned efforts to reduce the amount of time involved in the review and approval process. With this in mind, ARTBA is supportive of the approach taken by the CEQ guidance, which states “[a]gencies are not required to quantify effects where information necessary for quantification is unavailable, not of high quality, or the complexity of identifying emissions would make quantification overly speculative.” ARTBA also agrees with CEQ that “[a]gencies preparing NEPA analyses need not give greater consideration to potential effects from GHG emissions than to other potential effects on the human environment.”

As agencies do consider greenhouse gas emissions for transportation projects, ARTBA recommends these analyses take into account both the potential benefits and adverse impacts of the project in question. For example, a complete analysis would consider a reduction in GHGs resulting from the extent to which a transportation improvement alleviates congestion. Emissions from vehicles stuck in traffic are much greater than those on roads where traffic is free flowing.

Additionally, any proposed NEPA GHG and climate change analysis should be limited to the project itself. NEPA was not meant to ascertain the impacts of what may or may not happen once a project is completed. Thus, if a transportation improvement is reviewed under NEPA for GHG and climate change impacts, the analysis should focus only on the project itself and not attempt to include subsequent development which may or may not occur once the project is complete.
Social Cost of Carbon

ARTBA also supports CEQ’s decision that use of the Social Cost of Carbon (SCC) is not needed in any NEPA analysis of GHG emissions. The SCC, which was developed in 2010 by a group of 13 federal agencies, including the United States Department of Transportation (U.S. DOT), is “an estimate of the monetized damages associated with an incremental increase in carbon in any given year.” ARTBA has two major critiques of the SCC. First, when applied to transportation projects, the SCC is only used to ascertain the “costs” of those projects in terms of carbon emissions. SCC does not account for any carbon-related “benefits” achieved through the construction of transportation improvements which reduce congestion. As previously mentioned, EPA’s own data indicates that carbon emissions from vehicles are higher when vehicles are stuck in congestion as opposed to free-flowing traffic. Thus, SCC is an incomplete or biased analysis. If there is to be a tool measuring the implication of carbon emissions from transportation improvements, it must include the benefits realized by those projects.

Further, the vagueness of the SCC presents a variety of dangers to the regulated community. The proposal’s lack of an agreed upon federal definition as to what types of “costs” are to be measured could enable project opponents to suggest an endless array of considerations, which could essentially preclude new transportation improvements from being built. For example, many project opponents believe in the theory of “induced demand,” which essentially states that any new road capacity will “create” new motor vehicles to occupy it. Thus, use of the SCC to account for “induced demand” would be holding transportation projects responsible for the worst-case scenario predictions of their opponents.

Additionally, the open-ended nature of the SCC could attempt to hold transportation projects responsible for emissions associated with development occurring after the project is completed. Put another way, a new road could be held accountable for emissions coming from houses and/or businesses built along the road after it is complete. Again, such a measurement would be heavily speculative at best.

Conclusion

ARTBA supports CEQ’s proposed guidance on NEPA consideration of GHG emissions. The proposal recognizes that NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of this balance is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will address those needs. ARTBA appreciates the chance to offer these comments and looks forward to working with CEQ to continue to improve the NEPA process.

Sincerely,

David Bauer
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