

# Environmental Policy

## Executive Summary

Transportation improvements and environmental stewardship are not mutually exclusive. Their synergy can yield significant benefits, such as reduction in traffic congestion; protection of wetlands and waterways; innovative use of recycled materials; development of low carbon construction products; improved environmentally focused design, construction, and maintenance specifications; and utilization of modernized, cleaner equipment and construction practices.

ARTBA members engage in four primary areas of federal environmental policy and regulation:

- National Environmental Policy Act and Permitting
- Clean Air and Climate Change
- Clean Water and Wetlands
- Habitat and Species

ARTBA's environmental policy priorities incorporate the following principles:

- In the proper regulatory environment, the transportation construction industry can plan, design, and build projects safely, efficiently, and cost-effectively, while achieving high standards of environmental stewardship.
- Federal regulations should minimize duplicative and redundant requirements in the planning and permitting process.
- Where needed, federal environmental agencies should modernize their regulations, incorporating contemporary data, technology, and methods of communication.
- In addition, those agencies should fully implement project delivery reforms in existing law, such as One Federal Decision.
- Environmental policy and regulation should build on the significant stewardship initiatives the industry has already undertaken.
- Federal environmental policy should seek to minimize project delays and the additional costs that can dilute the economic benefits of transportation investment.
- Properly maintaining the nation's transportation infrastructure, managing existing vulnerabilities and addressing future system needs and environmental impacts requires a stable, consistent federal funding mechanism.

To ensure continued progress in increasing the efficiency of environmental reviews and approvals, while promoting enhanced project outcomes, ARTBA supports recommendations in the following areas.

## National Environmental Policy Act and Permitting

Transportation infrastructure systems should be economically efficient while socially and environmentally sustainable. The National Environmental Policy Act (NEPA) plays an important role integrating relevant environmental regulations and natural resource protections, as well as addressing stakeholder concerns relating to the planning, design, and delivery of transportation projects. However, the NEPA process has grown inefficient, requiring an average of five to seven years for completion. Therefore, ARTBA supports the following improvements:

- Linking the planning and environmental processes by identifying potential project challenges and developing mitigation strategies before initiating NEPA will save time and money during project development.
- Allowing use of the project sponsor’s statement of purpose and need for all federal approvals and directing permitting agencies to give that document substantial deference during the approval process.
- Minimizing harm to disadvantaged communities and promoting greater connectivity and opportunity as part of the transportation planning process.
- Ensuring appropriate consideration of potential capacity improvements, as well as multi-modal opportunities, when evaluating project alternatives during planning and environmental reviews.
- Enabling meaningful stakeholder participation by email, phone, virtual communication and meetings platforms, social media or other technologies in meeting environmental review and community engagement requirements.
- Easing inter-agency coordination and stakeholder involvement by migrating the development of NEPA documents from static PDFs to interactive, cloud-based digital platforms where possible.
- Supporting increased delegation of NEPA reviews to states.

## Clean Air and Climate Change

The transportation construction industry has played a critical, if often unrecognized, role in improving the nation’s air quality. ARTBA members continuously seek and deploy cleaner and more efficient methods of transportation construction. Moreover, many projects directly improve air quality and reduce greenhouse gas (GHG) emissions, especially those relieving traffic congestion—a leading cause of these emissions.

This is one reason why recent decades have seen significant improvements in the nation’s air quality and emissions from the transportation sector specifically. The U.S. Environmental Protection Agency (EPA) has reported, “Between 1970 and 2021, the combined emissions of the six common pollutants (PM2.5 and PM10, SO2, NOx, VOCs, CO and Pb) dropped by 78 percent. This progress occurred while U.S. economic indicators remain strong.” EPA noted that Gross Domestic Product, vehicle miles traveled, and population had grown over that period, while emissions declined.

However, Clean Air Act (CAA) regulations have not properly recognized this long-term progress. As a result, CAA initiatives have been criticized as reflecting the varying policy goals of presidential administrations, rather than being based on science, public health and safety.

Given these circumstances, ARTBA supports the following reforms, policies, and industry practices:

- Amending the Clean Air Act to allow consideration of regulations' implementation costs in addition to their effect on public health and safety.
- Incorporating resiliency into projects to better withstand changes in climate as well as natural disasters and other weather-related impacts.
- Deploying innovation and technology, as well as increased investment, in creating more resilient infrastructure, while acknowledging these practices must vary according to geography.
- Decreasing emissions associated with transportation construction through the appropriate use of recycled materials, alternative materials, and clean construction equipment.
- Increasing federal investment in highways, public transportation, and alternative mobility modes to help ensure a more efficient and accessible transportation network.
- Sunsetting transportation conformity requirements, which unfairly penalize counties by threatening and depriving them of federal highway funding for projects which will reduce congestion and improve air quality.
- Reviewing National Ambient Air Quality Standards (NAAQS) every ten years and ideally not until measures taken to meet existing standards have had a chance to take effect.
- Allowing use of funds from the Congestion Mitigation Air Quality (CMAQ) program for congestion reduction activities, including new roadway capacity.
- Directing any proceeds from a federal "carbon tax" (or other user-based fee tied to vehicle emissions) into the Highway Trust Fund, so users of the nation's surface transportation system will help pay for its maintenance and improvement.
- Providing flexibility in future regulations so states may address GHG emissions through their own preferred transportation improvements.
- Encouraging federal funding for processes that reduce emissions throughout all phases of transportation improvements, including building, use and disposal. Examples of beneficial emissions reduction strategies include:
  - o Efforts to develop and select materials with reduced net embodied carbon (e.g., low-carbon pavement, concrete, steel).
  - o Incentives for circular economy innovations (e.g., materials recycled content, re-use/recycling of construction "waste," and reducing the use of new materials).
  - o Use of renewable energy for construction and operation (e.g., on-site or through credits, and virtual power purchasing agreement).
  - o Maximizing ongoing emissions reductions in construction.
- Building on the success of the transportation construction industry's Environmental Product Declarations (EPDs) and working to improve them, rather than imposing new mandates conflicting with recent progress.

## Clean Water and Wetlands

In seeking to comply with permitting requirements under the Clean Water Act (CWA), the transportation construction industry has faced continually unsettled policies. Major revisions to federal agencies' definition of "Waters of the United States" (WOTUS), resulting from changes in presidential administrations, have needlessly complicated long-term planning for transportation projects and often resulted in delays and increased costs. In addition, overly prescriptive rules can prevent contractors and designers from devising innovative and timely solutions for preserving wetlands in proximity to projects.

To address these challenges, ARTBA supports the following CWA reforms:

- Development of a clear, permanent definition of WOTUS, focused on relatively permanent waterbodies and immediately adjacent wetlands that is easily recognizable to both landowners and transportation planners.
- Exclusion from federal jurisdiction of isolated wetlands and man-made ditches or remote wetlands with finite connections to navigable waters.
- Consistent application of CWA regulations by all U.S. Army Corps of Engineers (Corps) district offices.
- Designation of a "de minimis" level of wetlands impacts and the use of "non-notifying" permits to acknowledge insignificant impacts not warranting federal or state intervention.
- Development of an efficient wetlands permitting process, allowing for necessary protection of ecologically sensitive resources without excessive delay for transportation improvement projects. Specific reforms include:
  - o Time limits for agency permitting decisions.
  - o Designation of the Corps as the "lead agency" in permitting decisions and removal of the EPA from the wetlands permitting process.
  - o Expanded use of the Nationwide Permit Program to limit time-consuming individual permits to projects with the greatest impact.
- Encouraging mitigation banking as the preferred method of wetlands reclamation. This approach provides flexibility to project developers in meeting wetlands restoration obligations by allowing selection of a mitigation site based on environmental value rather than proximity to a highway project. Moreover, mitigation banking should encompass:
  - o Expanded and financially reasonable mitigation service areas,
  - o Transfer or sale of mitigation credits when appropriate, and
  - o Delegation of responsibility to the states when possible.
- Sharing of resources among the Corps, states and third parties—including the use of independent consultants where appropriate—with the objective of reducing permit backlogs and delays.
- Using technology to expedite the federal CWA permitting process.

## Habitat and Species

Transportation improvements should minimize impacts to wildlife and their habitats. Projects can also offer enhancements such as wildlife crossings, which help prevent collisions to the benefit of both wildlife and the traveling public.

The Endangered Species Act (ESA) seeks to balance species protection with the need for development, including transportation improvements. However, that intended balance is often overlooked in pursuit of overly broad species recovery actions that have minimal impact.

To better harmonize these objectives, ARTBA supports the following reforms to the ESA:

- Development of a clear, concise definition of “habitat” to be used across all reviewing and permitting offices.
- Application of ESA regulations in a consistent manner by all U.S. Fish and Wildlife Service district offices.
- Designating an area as a “critical habitat” only when it clearly and fully includes essential physical and biological features, the precise and scientifically sound definition of these features, and demonstrable evidence that occupation of currently unoccupied habitats is reasonably foreseeable.
- Greater and more meaningful consideration of local communities and affected industry in determining economic impacts associated with critical habitat designation.
- Establishing a standard to define the “best available” scientific data for all ESA determinations, which should be publicly available and peer reviewed.
- Disallowing speculative ESA litigation based on “possible” development that could result from a proposed transportation project.
- Reducing unnecessary delay in the ESA Section 7 consultation process by focusing on mitigation instead of avoidance (as in ESA Section 10). Mitigation allows for the flexibility necessary to balance species preservation with the overall improvements to communities resulting from transportation projects.
- Considering impacts (economic and otherwise) from the inability to build a project because of ESA considerations, as well as any equity issues when such a project is intended to benefit a disadvantaged community.
- Crediting material gathered during the informal ESA consultation process to the formal stage of the process. This reform would avoid both unnecessary delay and duplication of work.

# MEMBERS MAKING AN IMPACT

AECOM's carbon reduction platform identifying the potential for their work to cut

**84 million tons**

of CO2 from the built environment annually.

John Deere recycling

**84%**

of its total waste in 2022.

CEMEX:

**30%**

Clean Electricity Consumption

Summit: Recycled more than

**185,000 tons** of concrete and more

than 12,800 tons of recycled materials including metals, plastics, paper, cardboard and mixed recycling in 2022.

In 2021, Granite introducing a hot-mix asphalt incorporating post-consumer plastic which recycles the equivalent of

**483,706 plastic bottles per mile.**

Caterpillar reducing their scope 1 and scope 2 greenhouse gas emissions (GHG) by

**33%** since 2018.

Sterling Infrastructure building projects in the western United States which reduce wildlife-vehicle collisions by up to

**97%.**

In 2022, CRH saving

**140 billion liters**

of water by recycling at its various locations.

**95%**

The percentage of asphalt mixture reclaimed from old asphalt pavements and put back to use in new pavements in 2021—up from 93% the previous year.

-NAPA

In 2020, IEA using over **550,000 tons** of recycled fly-ash, steel and aggregate products in the projects it has constructed.