

NEPA Assignment

Jason Jurgens, Environmental Section Manager


2018 AASHTO Committee on Construction

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

NEPA – Improved Decision-Making

- **N**ational **E**nvironmental **P**olicy **A**ct
 - Procedural law that sets national environmental policy
 - Applies to all federal agencies
 - Ensures that the environmental, social and economic effects of their actions are considered *prior to* making decisions
 - Provides opportunities for public and agency input
 - Requires agencies to follow a process to identify and balance impacts in order to make an *informed* project decision
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Considerations are many and broad ranging

Archeological and Historic Preservation Act
Endangered Species Act
Rivers and Harbors Act
Native American Graves Protection and Repatriation Act
Clean Air Act
Floodplains and Wetlands
Comprehensive Environmental Response, Compensation and Liability Act
Toxic Substances Control Act
Clean Water Act
American Indian Religious Freedom Act
National Historic Preservation Act
Environmental Justice
Research Conservation and Recovery Act
Wild and Scenic Rivers Act
Coastal Zone Management Act
Safe Drinking Water Act
Farmland Protection Policy Act



NEPA Assignment Overview

- Formal assignment of FHWA's NEPA responsibilities to a State
 - All NEPA classes of action – CEs, EAs and EISs
 - All environmental laws, rules, and orders
- State DOT will be the Lead Federal Agency on all federal-aid projects for environmental decision-making
- State DOT is legally responsible and liable for compliance

NEPA Assignment does not change any current legal requirements. There are no shortcuts!



NEPA Assignment Options

23 USC 326 Categorical Exclusions (CEs Only)	23 USC 327 Full Program (CEs, EAs, & EISs)
Demonstrate Readiness – NDOT already responsible for approving ≈ 80% of CEs	Demonstrate Readiness – bigger, more diverse responsibilities
Less risk exposure (not in Federal Register)	Greater risk exposure
Faster implementation	Longer Implementation
No application	Formal application with public comment period
MOU (3 years) – signed by Division Administrator	MOU (5 years) – signed by Agency Administrator
Self assessment reporting	Self assessment reporting
Monitoring reviews – performed by FHWA Division	Audit reviews – performed by FHWA HQ
No performance measures required	Reporting on specific performance measures

What Can Go Wrong?

- No more FHWA backstop
“The feds are making us do it....”
 - State DOT has to make the right decisions, based on the required process and laws and stand by it.
- Failure - FHWA can take the program away.



Why NEPA Assignment?


- Alignment with Statewide Mission and Goals
- Alignment with NDOT Goals
- Local decision-making
- Increased ownership of process
- Potential cost savings



Changes Needed for NEPA Assignment

- **Sovereign Immunity Waiver**
 - Change State Law to accept Federal Court Jurisdiction with respect to the responsibilities being sought
 - **“LIMITED”** Waiver
- Need to address shortcomings in program
 - Requires a hard look.....NDOT identified a few areas that required major overhaul and many new process procedure requirements.

What has already happened?

- Built support of Innovation Task Force, Highway Commission
 - Passed new legislation, LB271 (*April 2017*)
 - Readiness Assessment (*August 2017*)
 - Decision on Assignment pathway (*November 2017*)
 - Agency outreach (*NDEQ, NGPC, EPA, USFWS, USACE, SHPO – December 2017*)
 - Update existing Procedures and Programmatic Agreements (on-going)
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What have we done to get ready???

- Staff Changes

- Attorney General office staff dedicated to NEPA Assignment
- Environmental Section Project Managers
 - Technical Staff Redundancy
- Change Accountability/Project Delivery Team (the SUPER-Team!)
 - Roadway Design, Bridge Design, Environmental Section, District Construction, ROW and Project Scheduling
 - District Project Delivery Engineers
- ECOD – Environmental Compliance Data Base

HOW HAS IT WORKED SO FAR....

- Since Ohio entered into NEPA Assignment:
 - ODOT has processed over 2,000 projects
 - ODOT has entered into new processes improvement agreements w/all their agencies
 - ODOT has increased their training with their LPA's and consultants
 - ODOT has increased the speed of delivery on NEPA by 20%
 - Faster delivery time equals less inflation and delay costs in construction, thus ODOT's \$17.7 million in savings thus far

NEPA ASSIGNMENT TIME & COST SAVINGS IN OHIO

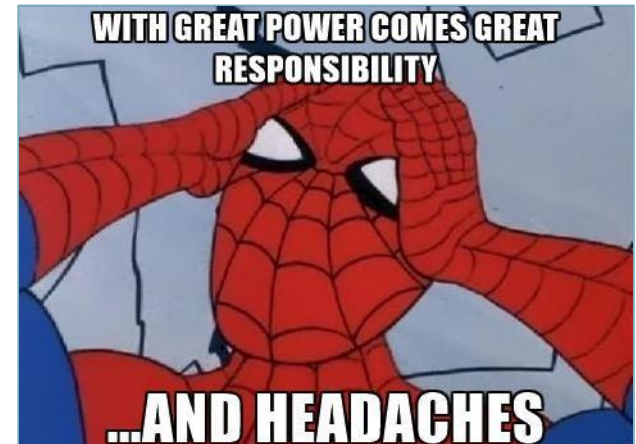
Review Period 04/01/2016 through 03/31/2017

Project Size	Total # Days Saved	Amount Saved (Millions)
Small	1350	\$ 5.70
Medium	1230	\$ 1.87
Large	390	\$ 5.55
TOTAL SAVINGS	2970	\$13.12

(Total saved since the beginning of NEPA Assignment: \$17.7 million)

So.....how does NEPA Assignment affect Construction???

- Overall, the end project delivery products should look the same....but,
 - More consistency in schedule delivery
 - More predictability for contact expectation
 - Quicker reacting to plan changes during Construction
- Greater Responsibility
 - Greater Awareness of Environmental Issues - Training
 - Recognize when Environmental Review of Plan changes is appropriate
 - Broader Stewardship



Assignment is not for Everyone

- State DOT's must have a mature program
 - Well trained staff...
 - Can manage the risk appropriately...
 - Uses FHWA for guidance, not approval...
- In the end, every day does count...



Where has this been done before?

- CALTRANS
- Texas DOT
- Ohio DOT
- Florida DOT
- Alaska DOT&PF
- Utah DOT
- Arizona DOT - Recently approved for CE Assignment; pursuing Full NEPA Assignment
- **Nebraska DOT** – CE Assignment MOU currently on the Federal Register

Expecting execution on September 5th !



Future of “Assignment” Programs

- NEPA Assignment has proved a success
- Other areas of DOT’s are as mature as what NEPA is:
 - Right of way
 - Construction
 - Others?
- Can “Assignment” like programs be applied to these areas?



Future of “Assignment” Programs

- This isn't “getting rid” of FHWA...
 - The focus is using FHWA's skills to their greatest strength
 - Dealing with less staff
 - Nationwide focus
 - Statewide oversight vs. project by project reviews/approval.....



A photograph of three people in high-visibility safety vests and work clothes standing on a grassy bank next to a river. They appear to be conducting an environmental assessment or field study. One person is writing on a clipboard, another is looking at a tablet, and the third is holding a shovel. The background shows a line of trees under a cloudy sky.

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Jason Jurgens
Environmental Section Manager
Jason.Jurgens@nebraska.gov
402-479-4418