



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

KOIN Center, Suite 600
222 S.W. Columbia Street
Portland, Oregon 97201

Subject: Supplemental Hazardous Waste Guidance

Date: January 16, 1997

From: Director
Office of Planning and Program Development

Reply to
Attn. of: HPP-010.2
File: 418.38

To: **DIVISION ADMINISTRATORS**
Mr. R. E. Ruby, Juneau, Alaska (HDA-AK)
Mr. J. T. Coe, Boise, Idaho (HDA-ID)
Mr. H. D. Honeywell, Salem, Oregon (HDA-OR)
Mr. G. K. Fong, Olympia, Washington (HDA-WA)

Mr. Rich Wasill, Acting Division Engineer
Western Federal Lands Highway Division
Vancouver, Washington

For several years, we have noticed in environmental documents that the procedures for dealing with contaminated sites during project development vary greatly and often deviate from existing FHWA guidance. In addition, we have had considerable discussion recently with WSDOT about FHWA's emphasis on early investigation and, where possible, avoidance of substantially contaminated properties. In particular, WSDOT has been concerned about the difficulty in following this guidance when the landowner denies access for on-site hazardous waste investigations. Despite other States being able to gain such access in a straightforward way, the Washington Attorney General has advised WSDOT that, under their State access law when the landowner denies access, WSDOT can gain access for investigations only by way of a limited condemnation action in which some reimbursement is made for the temporary use or "damages" to the property. The process and delay involved in such an action has effectively resulted in inadequate investigation of such sites and therefore uncertainty in the magnitude/costs/delays of hazardous waste involvement until the design and right-of-way stages, when project options are very limited. WSDOT estimates that, on average, they are denied access on up to 20% of project right-of-way properties.

FHWA's approach (i.e. policy) on dealing with hazardous waste contamination is in the "Interim Guidance-Hazardous Waste Sites Affecting Highway Project Development, 1988" which is attached. This guidance strongly emphasizes the need to identify and assess potentially contaminated sites early in project development; to coordinate early with Federal/State/local agencies to assess the contamination and the cleanup needed; and to determine and use measures

early to avoid or minimize involvement with substantially contaminated properties. Avoidance is repeatedly stressed as the preferred option unless the risks and costs of proceeding with contaminated property can be justified. The guidance goes on to describe the methods to be used and information to be gathered on potentially contaminated properties, relative to the draft and final environmental documents, and indicates that the type, estimated extent, and estimated cleanup costs of any substantial contamination are major factors to be considered in selecting the project alternative to implement.

The emphasis on early investigation and avoidance/minimization of contaminated property is based on extensive experience showing that serious contamination can result in very excessive project delays, impacts, costs, and liability. On the other hand, experience with minor contamination such as limited contamination with USTs, structural asbestos, etc. shows that not all contaminated property must be avoided and some can be dealt with in a relatively predictable manner. For the latter, the key is still early investigation and recognition that the extent of the problem is limited and reasonable to deal with for the particular project circumstances. We believe the guidance's emphasis on early investigation and avoidance/minimization should continue. New initiatives such as the "brownfields" initiative and "risk-based cleanup" approach may provide some flexibility with regard to avoidance/minimization in the future. But again, these approaches still rely on early investigation of the type and extent of the problem/solutions.

Accordingly, we provide the following to supplement the existing 1988 guidance:

- 1) All properties for each alternative analyzed in the draft environmental document should be evaluated for potential contamination. This evaluation should follow the 1988 guidance (Section III.2) and AASHTO guidance on Initial Site Assessments (ISAs) to identify the potentially contaminated properties of each alternative. The information gathered should be sufficient to compare the scope of potential hazardous waste involvement among the project alternatives in the draft environmental document and support the determination of a preferred alternative.

- 2) For the final environmental document, the identified potentially contaminated properties associated with the preferred alternative should be evaluated further by additional on-site investigations, including limited on-site sampling and testing of soil/water/air according to the 1988 guidance and AASHTO guidance on Preliminary Site Investigations (PSIs) in order to confirm the presence of contamination and estimate its magnitude/extent and the estimated type/cost of cleanup of the confirmed sites. This limited testing is key to recognizing the scope/costs/delays that are associated with the preferred alternative and allowing these to be factored into the decision to select the project alternative to be implemented. The alternative identified as the preferred alternative is almost always the alternative selected for implementation. Therefore, the early testing of the preferred alternative to confirm and estimate the contamination/cleanup will not only support the determination of the preferred alternative and decision on the alternative to implement but will also facilitate the expanded detailed site investigation and coordination with regulatory agencies, which closely follows in the design and right-of-way stages. In some cases, the extent of contamination problems found through this limited testing could lead to reconsideration of the preferred alternative and selection of another alternative. Involvement with serious contamination demands as much lead time as possible for testing, analysis, coordination, and negotiation. It is necessary, prudent, and cost effective to

provide this lead time by conducting a base of limited testing of the preferred alternative for the final environmental document. Although this may delay the final environmental document somewhat, it should shorten the total project delivery time when hazardous wastes are involved.

3) It is expected that the above procedures would be followed for all potentially contaminated properties to which the State can obtain access, and it is expected that the State would exhaust every reasonable means to work with property owners and the regulatory agencies to gain access. If voluntary access cannot be obtained, the State is encouraged to seek court-granted access or a limited condemnation action for investigation of potential substantially contaminated property for the preferred alternative, while still pursuing and negotiating for voluntary access. For those limited instances where access cannot be obtained, the procedure in paragraph 4 should be used to estimate the extent, cleanup methods, and costs related to the potential contamination for the final environmental document and project alternative (location) decision. States are encouraged to pursue legislative changes to their access law, if needed for investigation and testing prior to the right-of-way stage.

4) For potentially contaminated properties of the preferred alternative where access has been denied, the State should use all information available and the best professional judgement of staff experienced with hazardous waste contamination to estimate either the worst case that could reasonably be expected or the most likely case for the extent/cleanup/cost of the potential contamination. This estimate should be reliable and should take into account all related information which could help refine the estimate, such as the observed characteristics of the site, experience with similar sites in the past, existing records, interviews, previous testing by others, and testing by the State of properties adjacent to the site. This worst case or most likely case for the access-denied sites should then be combined with the results of investigation/testing of other potentially contaminated properties for the preferred alternative and summarized in the final environmental document.

(Note: For CE projects that may not have comparable draft and final environmental documents, it is expected that the appropriate testing or estimates would be made prior to final approval of the CE, to support that location decision.)

5) The other provisions of the existing FHWA 1988 guidance (i.e. legal, Federal-aid eligibility, planning, design, right-of-way, construction) remain valid and applicable. The supplemental guidance provided in this memorandum is also consistent with the FHWA training course "Hazardous Waste: Impacts on Highway Project Development, Construction, and Maintenance," and the October 21, 1996 CTE teleconference "Remediation of Hazardous Materials in Transportation Rights-of-Way."

We believe these procedures continue to emphasize avoidance and minimization of contaminated properties where possible and appropriate; provide a logical, prudent, and cost effective approach to incremental investigation and testing of potentially contaminated properties; and provide flexibility for dealing with the problem of access denied for investigations. For further information please contact Bob Falkenstein or Glenn Bridger at (503) 326-2061.


Carl S. Armbrister

Attachment