



1997 FHWA Memorandum

Supplemental Hazardous Waste Guidance

This FHWA memorandum supplements the 1988 FHWA guidance and provides a framework to build effective processes for dealing with hazardous materials.

DRAFT

Memorandum



U.S. Department of Transportation Federal Highway Administration

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Subject: Supplemental Hazardous Waste Guidance

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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, when the landowner denies access, they 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 no adequate 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 endorses the need to identify and assess potential 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 contaminated properties. Avoidance is repeatedly stressed as the

substantially

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 alternative to implement.

The emphasis on early investigation and avoidance/minimization of involvement with contaminated property is based on extensive experience that shows 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 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 potential 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 alternative to be implemented. Since the identified preferred alternative is almost always the alternative selected for implementation, the early testing to confirm and estimate the contamination/cleanup will not only support the determination of the preferred alternative and decision on the selected alternative, but will also facilitate the expanded detailed site investigation and associated coordination with regulatory agencies which closely follow in the design and right-of-way stages. 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 initiate this lead time by conducting a base of limited testing of the preferred alternative for the final environmental document.

3) It is expected that 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 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 potentially contaminated property of the preferred alternative, while still pursuing and negotiating for voluntary access. For those limited instances where access cannot be obtained, the following procedure should be used to estimate the extent, cleanup methods, and costs of the potential contamination for the final environmental document and project alternative (location) decision.

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 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, 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 location approval, to support that 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