



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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May 21, 2014

U.S. General Services Administration
Section 515
1800 F Street, NW, Room 2024
Washington, DC 20405

Re: Data Quality Act Complaint against GSA's *Categorical Exclusion for the Peace Bridge Commercial Building Expansion Project in Buffalo, New York*

By U.S. Mail & Email

To Whom It May Concern:

Public Employees for Environmental Responsibility ("PEER") hereby submits this Information Quality Act Complaint ("Complaint") pursuant to the Data Quality Act of 2000,¹ the Office of Management and Budget ("OMB") *Guidelines for Ensuring and Maximizing the Quality, Utility, and Integrity of Information disseminated by Federal Agencies* ("OMB Guidelines"),² and the U.S. General Services Administration ("GSA") *Information Quality Guidelines—Section 515* ("GSA Guidelines").³

Media exposure of GSA's *Categorical Exclusion* ("CE") *for the Peace Bridge Commercial Building* ("Commercial Building") *Expansion Project in Buffalo, New York*, dated Nov. 15, 2012,⁴ raised questions about the integrity of this regulatory compliance document and the possibility that pressure from elected officials – namely New York Gov. Andrew M. Cuomo, U.S. Sen. Charles E. Schumer, and U.S. Rep. Brian Higgins – influenced GSA's findings documented therein.^{5,6,7,8} In fact, Denise L. Pease, Regional Administrator for GSA's Northeast

¹ Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554, Sec. 515.

² Office of Mgmt. & Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (Feb. 22, 2002).

³ U.S. General Services Administration, *Information Quality Guidelines—Section 515* (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁴ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

⁵ Jerry Zremski, *GSA review process for expansion called deficient*, The Buffalo News, Jan. 25, 2014, available at <http://www.buffalonews.com/city-region/gsa-review-process-for-expansion-called-deficient-20140125>.

and Caribbean Region, was in direct communication with Barry Sample, Gov. Cuomo's Deputy Director of State Operations; Nicholas "Nick" Dhimitri, Regional Director of Sen. Schumer's Buffalo office; and Nicholas Martin, Sen. Schumer's Director of Intergovernmental Relations, on matters specifically related to the Peace Bridge complex in the months leading up to the issuance of GSA's CE for the Commercial Building Expansion Project.⁹ In addition, U.S. Rep. Brian Higgins allegedly "advocated for [GSA] to complete its [CE] review so the project could move forward."¹⁰ News of the controversy was picked up through PEER's national alliance of scientific and environmental law professionals. PEER subsequently reviewed the document in detail and confirmed its inadequacies.

PEER respectfully requests that GSA rescind its CE for the Commercial Building Expansion Project on the basis that it contains false and unsubstantiated statements and conclusions, and complete a new externally peer-reviewed *National Environmental Policy Act of 1969, as amended* ("NEPA") environmental analysis for the Project that constitutes a full and open environmental review which affords interested agencies, stakeholders, and the public the opportunity to learn about, comment, and influence decision making. GSA issued its CE to satisfy the agency's legal requirements pursuant to NEPA, in accordance with the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA¹¹ and GSA's Public Buildings Service NEPA Desk Guide¹² for the following proposed federal actions: "improvements of a structure to be performed on behalf of the United States... [and] the execution of a supplemental lease agreement/lease amendment for an improved structure."¹³ However, GSA's analysis of the proposed federal action overwhelmingly relies on false or unsubstantiated information instead of using reliable, accepted, and available methods of analysis and existing peer-reviewed data. In addition, information is absent that would allow a qualified member of the public to verify any of the data, analysis, or conclusions.

NEPA requires federal agencies to analyze "cumulative impacts," which NEPA defines as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."¹⁴ Because GSA's CE for the Commercial Building Expansion Project contains false and unsubstantiated statements, it is

⁶ Matthew Ricchiazzi, *Feds stonewall questions on thwarted Peace Bridge investigation*, Buffalo Rising, Feb. 18, 2014, available at <http://buffalorising.com/2014/02/feds-stonewall-questions-on-thwarted-peace-bridge-investigation>.

⁷ Matthew Ricchiazzi, *Federal document exposes frivolous environmental review on Peace Bridge project, GSA deception apparent*, Buffalo Rising, Feb. 26, 2014, available at <http://buffalorising.com/2014/02/federal-document-exposes-frivolous-environmental-review-on-peace-bridge-project-gsa-deception-apparent/>

⁸ Denise Jewell Gee, *Federal agency gives green light for renovation of Peace Bridge building*, The Buffalo News, Nov. 17, 2012, available at <http://www.buffalonews.com/article/20121117/CITYANDREGION/121119238>.

⁹ See *Enclosure 1*.

¹⁰ Denise Jewell Gee, *Federal agency gives green light for renovation of Peace Bridge building*, The Buffalo News, Nov. 17, 2012, available at <http://www.buffalonews.com/article/20121117/CITYANDREGION/121119238>.

¹¹ 40 CFR Parts 1500-1508.

¹² U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide* (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

¹³ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 1, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

¹⁴ 40 CFR 1508.7

impossible for the agency to have appropriately considered the magnitude of cumulative impacts associated with this project. Therefore, any and all proposed or ongoing actions with the Peace Bridge complex—including the New York Gateway Connections Improvement Project—should be suspended until GSA responds to this Complaint.

A. INTRODUCTION.

The Peace Bridge complex is an international vehicular and pedestrian border crossing between Buffalo, New York (United States) and Fort Erie, Ontario (Canada). The complex, including all associated land and infrastructure, is owned and maintained by the Buffalo and Fort Erie Public Bridge Authority.

In 2012, New York Governor Andrew M. Cuomo and the Buffalo and Fort Erie Public Bridge Authority separately announced plans to fund multiple physical infrastructure projects at the Peace Bridge complex, totaling over \$125 million.^{15,16} One such effort is the \$20 million Commercial Building Expansion Project, funded entirely by the Buffalo and Fort Erie Public Bridge Authority.¹⁷

The Commercial Building is a transportation inspection facility that contains commercial truck inspection bays and offices used by the federal government to conduct vehicle inspections at the Peace Bridge. The Buffalo and Fort Erie Public Bridge Authority owns the Commercial Building, while GSA is the federal leaseholder for this property.

According to GSA's CE for the Commercial Building Expansion Project, the purpose of this project is to provide "additional space to allow Federal inspection personnel to be housed in the same building where inspections occur."¹⁸ Because this project is being "performed on behalf of the United States" and involves "the execution of a supplemental lease agreement/lease amendment for an improved structure," GSA is responsible for conducting an appropriately scoped environmental review pursuant to the agency's obligations under NEPA.^{19,20}

Depending on the scale of a given project, GSA is required to evaluate the action through a CE, Environmental Assessment, or Environmental Impact Statement.²¹ GSA chose to complete a CE for the Commercial Building Expansion Project to help GSA "determine if there are any 'extraordinary circumstances' present in this case that compel an [Environmental Assessment] or an [Environmental Impact Statement] as is required by GSA's NEPA

¹⁵ James Fink, *\$85M to kick-start Peace Bridge plaza work*, Buffalo Business First, April 4, 2012, available at <http://www.bizjournals.com/buffalo/news/2012/04/04/85m-to-kick-start-peace-bridge-plaza.html?page=all>.

¹⁶ James Fink, *\$40M in Peace Bridge contracts awarded*, Buffalo Business First, Sept. 7, 2012, available at <http://www.bizjournals.com/buffalo/news/2012/09/07/40m-in-peace-bridge-contracts-awarded.html?page=all>.

¹⁷ *Governor Cuomo announces progress on Peace Bridge plaza construction*, Governor's Press Office, State of New York, Aug. 4, 2012, available at <http://www.governor.ny.gov/press/08042012peace-bridge-plaza-construction>.

¹⁸ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 4, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

¹⁹ *Id.* at 1

²⁰ U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide* (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

²¹ *Id.*

implementing regulations, the GSA PBS NEPA Desk Guide (Oct. 1999).”²² GSA’s CE documents no such “extraordinary circumstances.” However, this conclusion was reached using false and unsubstantiated information.

B. DESCRIPTION OF CHALLENGED INFORMATION THAT NEEDS TO BE CORRECTED TO COMPLY WITH GSA GUIDELINES AND OMB GUIDELINES.

GSA’s NEPA implementation procedure guidelines state that the agency may only issue a CE for projects involving “lease construction or expansion or improvement of an existing facility” if said project meets **all** four of the following Conditions:²³

1. *The structure and proposed use are substantially in compliance with local planning and zoning and any applicable State or Federal requirements;*
2. *The proposed use will not substantially increase the number of motor vehicles at the facility;*
3. *The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and,*
4. *There is no evidence of community controversy or other environmental issues.*

PEER maintains that GSA’s CE for the Commercial Building Expansion Project fails to meet **Condition 2** and **Condition 4**. The CE provides no quantifiable and verifiable analysis proving that the proposed use of the Commercial Building will not substantially increase the number of motor vehicles at the facility (Condition 2), and GSA had in its possession evidence of both community controversy and other environmental issues but failed to note either in its CE for the Commercial Building Expansion Project (Condition 4). Regardless of whether GSA can validate its claims specific to Condition 2, the fact that the Commercial Building Expansion Project does not meet Condition 4 means that GSA is required to conduct an Environmental Assessment and/or Environmental Impact Statement for the Commercial Building Expansion Project.

Condition 2: The proposed use will not substantially increase the number of motor vehicles at the facility.

GSA’s CE fails to provide information consistent with the requirements of GSA Guidelines and OMB Guidelines to support Condition 2. All statements on this topic are unsubstantiated and require supporting documentation only obtainable through the completion of a traffic impact study and a study of the federal government’s current vehicle inspection operations and anticipated vehicle inspection operations post-construction.

To explain these concerns, consider the following statement from page 11 of GSA’s CE:²⁴

²² U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 1, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

²³ U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide*, Section 5.4 (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

The proposed facility will provide space to federal inspection officers who are currently housed further away. This will increase operational efficiencies and help reduce the amount of time trucks are idle in the inspections areas waiting for the inspectors to arrive.

The statement above is problematic on many levels. For instance, GSA provides no data to substantiate its claim that operational efficiencies for commercial truck inspections will increase by locating federal inspection officers at the Commercial Building.

On page 8 of GSA’s CE, GSA makes the following claim:²⁵

The project is not expected to increase traffic across the bridge or increase the number of truck inspections at the facility. [...] After construction of the project, no increase of vehicle trips to or from the facility is anticipated as a result of the project, and traffic patterns will remain the same. [...] Because the project would modernize the existing building and provide customized program space, government agencies and private brokers would operate more efficiently.

Like the previous statement, this claim is completely unsupported by empirical evidence, and it runs counter to known transportation planning principles. It is a fact that traffic congestion often occurs at the Peace Bridge due to the time it takes for federal agents to inspect commercial trucks. As documented by Todd Litman of the Victoria Transportation Institute—among many other researchers—“traffic congestion tends to maintain equilibrium” and exists at a level that restricts the further growth of traffic volume, much like the economic principle of supply and demand.²⁶

Commercial truck drivers have the choice of using either the Peace Bridge or the nearby Lewiston-Queenston Bridge to travel between Western New York State and Southern Ontario. While the Peace Bridge has more truck inspection lanes and slightly lower tolls than the Lewiston-Queenston Bridge, many commercial trucks still cross at the Lewiston-Queenston Bridge due to congestion at the Peace Bridge. If locating additional federal inspection officers at the Peace Bridge “increase[s] operational efficiencies and help[s] reduce the amount of time trucks are idle in the inspections areas waiting for the inspectors to arrive,”²⁷ then unless GSA can prove otherwise, it should be assumed that the Commercial Building Expansion Project will **increase** traffic across the Peace Bridge and **increase** the number of truck inspections at the facility, because

²⁴ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 11, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

²⁵ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 8, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

²⁶ Todd Litman, *Generated Traffic and Induced Travel: Implications for Transport Planning*, Victoria Transportation Institute, March 28, 2014, page 1, available at <http://www.vtpi.org/gentraf.pdf>.

²⁷ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 11, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

reduced congestion at the Peace Bridge—through faster processing times—will result in more commercial truck drivers choosing to use the Peace Bridge over the Lewiston-Queenston Bridge.

It should be noted that the two excerpts referenced above are just two examples of many instances in GSA's CE that are intended to support "Condition 2: The proposed use will not substantially increase the number of motor vehicles at the facility," but fail to provide responses that comply with GSA Guidelines and OMB Guidelines.

Condition 4: There is no evidence of community controversy or other environmental issues.

GSA's CE fails to satisfy the requirements of GSA Guidelines and OMB Guidelines for Condition 4 because GSA excluded evidence of "community controversy" and "other environmental issues," documentation of which GSA had on file and distributed via email among employees involved in the CE for the Commercial Building Expansion Project. All statements on this topic in the CE are therefore false or incomplete and require correction. Once corrected, however, the CE will no longer demonstrate that the Commercial Building Expansion Project satisfies all four CE Conditions stipulated in GSA's NEPA implementation procedure guidelines, meaning that GSA must conduct an Environmental Assessment and/or an Environmental Impact Statement pursuant to NEPA for this project.²⁸

Community Controversy

In the months leading up to GSA's issuance of its CE for the Commercial Building Expansion Project on Nov. 15, 2012, GSA officials circulated numerous emails with links to news reports documenting the existence of "community controversy" associated with proposed plans and construction activity at the Peace Bridge complex.²⁹ Renee Miscione, GSA Public Affairs Officer, received the news reports automatically by email through a "Google Alert." On numerous occasions, Ms. Miscione then forwarded those Google Alert emails to other GSA officials, including Ms. Pease.

The following headlines appear directly in the Google Alert emails that Ms. Miscione forwarded to Ms. Pease between June 14, 2012 and Oct. 25, 2012 and document the existence of community controversy:³⁰

- *Fireworks Over the Peace Bridge Demolitions*, Artvoice.
- *Disagreement on Peace Bridge's future*, WIVB.
- *Local Preservation Group Files Suit to Save Homes in Peace Bridge*, WGRZ-TV.
- *Group fights for homes at Bridge site*, WIVB.
- *Bridge plan finds detractors, supporters*, The Buffalo News.

²⁸ U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide*, Section 5.4 (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

²⁹ See *Enclosure 2*.

³⁰ *Id.*

- *Peace Bridge plaza battle unresolved*, WIVB.
- *Skeptical council reviews Peace Bridge expansion plans*, WBFO.
- *Bridge plaza health impacts will be discussed Wednesday*, The Buffalo News.
- *Residents near Peace Bridge question DEC air-monitoring effort*, The Buffalo News.

Based on the evidence cited above, GSA was completely aware of the existence of “community controversy” associated with the project site for the Commercial Building Expansion Project. It is critical to note that while not all of the headlines cited above are directly related to the Commercial Building Expansion Project, each one speaks to community controversy associated with the project site. Also, GSA’s NEPA implementation procedure guidelines do not distinguish the project site from the “project” itself when it comes to community controversy.³¹

Other Environmental Issues

When executing NEPA analyses, NEPA requires federal agencies to comply with agency-specific NEPA implementation procedures.³² Section 5.9 of GSA’s NEPA implementation procedure guidelines provide explicit direction on how GSA should have completed its CE for the Commercial Building Expansion Project.³³ For example, GSA’s NEPA implementation procedure guidelines stipulate that GSA’s CEs must “give special attention to whether the action is likely to have environmental impacts on a minority or low income group that... result in the... discharge of pollutants in the environment of such a group.”³⁴ The “action” examined in GSA’s CE for the Commercial Building Expansion Project is the amendment and renewal of GSA’s lease of the Commercial Building, which GSA’s CE identifies as a commercial truck inspection facility used by federal agents to inspect commercial trucks.

In an email dated Friday, Aug. 24, 2012, at 5:49 PM,³⁵ Ms. Pease distributed three peer-reviewed scientific and medical studies to at least four colleagues.^{36,37,38} These

³¹ U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide*, Section 5.4 (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

³² 40 CFR 1507.3

³³ U.S. General Services Administration, *Public Buildings Service National Environmental Policy Act Desk Guide*, Section 5.9 (1999), available at http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf.

³⁴ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 10, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

³⁵ See *Enclosure 3*.

³⁶ Joseph Spengler, Jamson Lwebuga-Mukasa, Jose Vallarino, Steven Melly, Steven Chillrud, Joel Baker, & Taeko Minegishi, *Air toxics exposure from vehicle emissions at a U.S. border crossing: Buffalo Peace Bridge Study*, Health Effects Institute, Harvard University School of Public Health, Jul(158), 5-132, (2011), available at <http://healthyhill.files.wordpress.com/2013/04/peace-bridge-study-of-air-toxics-exposure-at-peace-bridge.pdf>.

³⁷ Tonny Oyana, Peter Rogerson, & Jamson Lwebuga-Mukasa, *Geographic clustering of adult asthma hospitalization and residential exposure to pollution sites in Buffalo neighborhoods at a U.S.-Canada Border Crossing Point*, American Journal of Public Health, 94(7), 1250-1257, (2004), available at <http://healthyhill.files.wordpress.com/2013/04/peace-bridge-study-of-asthma-hospitalization-and-residential-exposure-to-pollution.pdf>.

three studies examine the public health epidemic that exists in the residential neighborhood east of the Peace Bridge complex—which the studies identify as a low-income and minority neighborhood—and attribute this public health epidemic to the diesel exhaust expelled by the Peace Bridge’s commercial truck traffic. The studies indicate that due to the volume of diesel exhaust emitted by the commercial trucks, residents living near the Peace Bridge are vulnerable to an array of life-threatening medical conditions, such as asthma; leukemia; lung, breast, and other cancers; stroke; congestive heart failure; birth defects; and neurological disorders. In fact, the asthma rate in this community is four times higher than the national average.³⁹

According to OMB Guidelines, “If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity.”⁴⁰ While GSA had in its possession peer-reviewed data and analytic results documenting the existence of an ongoing major environmental issue attributed directly to commercial truck traffic on the Peace Bridge, this information is not cited in GSA’s CE. Instead, the findings of these studies are casually referenced and dismissed by GSA on page 10 of the CE:⁴¹

Air emissions from diesel trucks transiting the border station have been identified as a concern since they (sic) have been reports indicating links between diesel emissions and asthma in the residential areas near the Peace Bridge. However, this project involves the renovation of, and construction of an addition to, an existing building. Construction and operation of the project would not significantly affect the flow of traffic, and in particular diesel truck traffic, across the port.

In the statement above, not only does GSA fail to identify the “reports” linking “diesel emissions and asthma in the residential areas near the Peace Bridge,” but it also once again makes an unsubstantiated claim that the project would not significantly affect traffic flow. Moreover, the second sentence in the excerpt above is intended to separate the Commercial Building Expansion Project itself from the federal operations that take place there as a consequence of GSA’s lease for the property (i.e., federal agent inspection operations of commercial trucks); if GSA did not lease the property, federal agent inspections of commercial trucks would not take place and commercial truck traffic would not be able to enter the United States via the Peace Bridge, effectively addressing the air quality issues facing the community east of the Peace Bridge.

³⁸ Jamson Lwebuga-Mukasa, Sanjay Ayirookuzhi, & Andrew Hyland, *Traffic volumes and respiratory health care utilization among residents in close proximity to the Peace Bridge before and after Sept. 11, 2001*, *Journal of Asthma*, 40(8), 855-864, (2004), available at <http://healthyhill.files.wordpress.com/2013/04/peace-bridge-study-of-traffic-volumes-and-health-care-utilization-before-and-after-sept-11th.pdf>.

³⁹ Daniel Telvock, *Asthma plagues Peace Bridge neighborhood*, *Investigative Post*, May 25, 2013, available at <http://www.investigativepost.org/2013/05/25/asthma-epidemic-near-peace-bridge>.

⁴⁰ Office of Mgmt. & Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (Feb. 22, 2002).

⁴¹ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 10, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

Elsewhere on page 10 of their CE, GSA references air quality data collected around the time GSA was conducting its analysis:⁴²

[R]ecent air sampling for PM_{2.5} from two air monitoring stations in the immediate vicinity of the Peace Bridge indicate that PM_{2.5} levels are below the National Ambient Air Quality Standards for the pollutant.

The source of the above statement is not cited. However, based on the date of GSA's CE and the reference to "two air monitoring stations in the immediate vicinity of the Peace Bridge," it is believed that GSA is referring to air monitoring conducted by the New York State Department of Environmental Conservation (NYSDEC) beginning in late Aug. 2012.⁴³ GSA's reliance on the NYSDEC data collected from this air monitoring effort is problematic for numerous reasons, including but not limited to the following:

1. GSA did not cite the source of these findings;
2. The NYSDEC did not release the data to the public until Sept. 2013, ten months after GSA issued its CE, meaning that GSA relied on information that was not publicly available or verifiable when it issued its findings; and,
3. After they were finally released in Sept. 2013, the NYSDEC data were proven to be "not scientifically valid,"⁴⁴ thereby invalidating the associated air quality claims in GSA's CE.

Based on this information, the air quality information contained in GSA's CE was not obtained, "using reliable data sources and sound analytical techniques," as mandated per GSA Guidelines.⁴⁵

In addition to the evidence cited above, on Sept. 10, 2012, Ms. Miscone forwarded a news report to Ms. Pease that contained the following text:⁴⁶

Public Meeting Regarding Health Effects of the Peace Bridge Buffalo Rising
A public meeting will be held this week regarding the negative health effects of the Peace Bridge. The meeting takes place this Wednesday, Sept. 12th from 7 to 9 pm and the Lafayette Presbyterian Church (875 Elmwood Avenue).

And on Oct. 25, 2012, Ms. Miscone forwarded another news report to Ms. Pease that contained the following text:⁴⁷

⁴² *Id.*

⁴³ New York State Department of Environmental Conservation, *Interim Report: Phase I of the Air Quality Study of the Impact of the Peace Bridge Plaza on the Surrounding Neighborhood*, (Sept. 2013), available at http://www.dec.ny.gov/docs/air_pdf/pbsept2013.pdf.

⁴⁴ Daniel Telvock, *Peace Bridge air study draws concerns*, Investigative Post, Nov. 13, 2013, available at <http://www.investigativepost.org/2013/11/13/peace-bridge-air-study-draws-concerns/>.

⁴⁵ U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁴⁶ See *Enclosure 2*.

⁴⁷ *Id.*

Forum held on Peace Bridge pollution

WIVB

Neighbors living near the Peace Bridge say pollution from all that traffic is making them seriously ill.

Based on the evidence cited above, GSA was completely aware of the existence of “other environmental issues” associated with the project site for the Commercial Building Expansion Project and with the intended use of the Commercial Building after the completion of all construction activity.

PEER further maintains that GSA’s CE for the Commercial Building Expansion Project violates GSA Guidelines and OMB Guidelines in that GSA had complete knowledge that numerous projects related to the Commercial Building Expansion Project were planned for the Peace Bridge complex, meaning that GSA’s CE for the Commercial Building Expansion Project erroneously reported that, “there would be no significant impacts, either individually or cumulatively, to the local environment or quality of life associated with implementation of Proposed Project.”⁴⁸ GSA’s CE contains no qualifying cumulative impacts analysis that is inclusive of these other projects as defined and required under NEPA.⁴⁹ Evidence of this is presented in the form of emails and written correspondence.^{50,51,52,53}

In a June 12, 2012 letter to Sam Hoyt, Chair of the Buffalo and Fort Erie Public Bridge Authority, Ms. Pease makes the following statement:⁵⁴

GSA’s understanding is that the only project currently planned for the Peace Bridge Plaza is the renovation/expansion of the commercial warehouse currently under lease. [...] It is GSA’s position that a larger project would require a full and open environmental review which affords interested agencies, stakeholders, and the public the opportunity to learn about, comment, and influence decision making.

Mr. Hoyt responded on June 26, 2012 in a letter to Ms. Pease that identifies three additional projects “currently planned” for the Peace Bridge complex. “These include a bridge approach widening, bridge re-decking, and changes to plaza ingress and egress including construction of a new ramp....”⁵⁵ Despite this newfound knowledge, GSA did not pursue a “full and open environmental review which affords interested agencies, stakeholders, and the public the opportunity to learn about, comment, and influence decision making,” even though Ms. Pease stated in her June 15, 2012 letter that a larger project would “require” such.⁵⁶

⁴⁸ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 11, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

⁴⁹ 40 CFR 1508.7

⁵⁰ See *Enclosure 3*.

⁵¹ See *Enclosure 4*.

⁵² See *Enclosure 5*.

⁵³ See *Enclosure 6*.

⁵⁴ See *Enclosure 3*.

⁵⁵ *Id.*

⁵⁶ *Id.*

In an email on Sept. 12, 2012, GSA employee Anne Callahan sent an email to Ms. Pease with four attachments detailing the extent of simultaneous and related design and construction work planned for the Peace Bridge complex.⁵⁷ Even with this additional information—which included graphics illustrating the close proximity of the projects—GSA still did not expand the scope of its environmental review.

Further, on Nov. 20, 2012, Joanna Rosato, Regional Public Buildings Service Commissioner for GSA’s Northeast and Caribbean Region, sent an email to Ms. Pease stating that the “State of New York has awarded a design services agreement (attached) for the Peace Bridge plaza that incorporates the CBP commercial building” on Nov. 16, 2012.⁵⁸ This agreement encompassed a \$126.2 million redesign of the United States plaza of the Peace Bridge complex and was awarded to Parsons Transportation Group, Inc.⁵⁹ GSA issued its CE for the Commercial Building Expansion Project on Nov. 15, 2012, just one day before the State of New York awarded this major design contract (Nov. 16, 2012) and five days before circulating an internal email documenting that the project would impact the Commercial Building leased by GSA (Nov. 20, 2012). Knowledge of this effort and timing of this award should have compelled GSA to rescind and correct its CE for the Commercial Building Expansion Project.

C. THE CHALLENGED INFORMATION CONTAINED IN THIS COMPLAINT IS COVERED BY GSA GUIDELINES AND OMB GUIDELINES BECAUSE THEY CONSTITUTE “INFORMATION” THAT GSA “DISSEMINATED TO THE PUBLIC.”

GSA Guidelines state the following under the *Information Covered by the Agency’s Guidelines* subsection:⁶⁰

The agency’s guidelines generally cover information disseminated to the public in any media or format, including print, electronic, audio/visual, or other form. [...] However, these guidelines do not govern all information of GSA, and also do not cover all information disseminated by GSA. [...] For example, the guidelines generally do not cover... [i]nformation collected or developed by the agency that is not disseminated to the public, including documents intended only for inter-agency or intra-agency communications....

In a Feb. 1, 2014 Letter to the Editor of The Buffalo News, Ms. Pease stated that GSA’s CE for the Commercial Building Expansion Project “was shared with local stakeholders when it was completed in 2012.”⁶¹ Therefore, the CE is subject to GSA Guidelines.

⁵⁷ See *Enclosure 5*.

⁵⁸ See *Enclosure 6*.

⁵⁹ Jerry Zremski, *Bad blood at Peace Bridge tied to state’s unilateral deal on plaza expansion*, The Buffalo News, June 9, 2013, available at http://www.buffalonews.com/20130609/bad_blood_at_peace_bridge_tied_to_state_x2019_s_unilateral_deal_on_plaza_expansion.html.

⁶⁰ U.S. General Services Administration, *Information Quality Guidelines—Section 515 (2002)*, available at <http://www.gsa.gov/portal/category/21547>.

⁶¹ Denise Pease, *GSA carefully followed the law in review of bridge plaza work* [Letter to the Editor], The Buffalo News, Feb. 1, 2014, available at <http://www.buffalonews.com/opinion/letters-to-the-editor/letter-gsa-carefully-followed-the-law-in-review-of-bridge-plaza-work-20140201>.

D. THE CHALLENGED STATEMENTS ARE “INFLUENTIAL INFORMATION” SUBJECT TO HIGHER STANDARDS OF QUALITY.

According to GSA Guidelines, “Information is considered influential if it will have a substantial impact on important public policies or important private sector decisions.”⁶² GSA also recognizes that, “Since much of GSA’s statistical and analytical information products potentially have an impact on important public policies, GSA’s information that is subject to Section 515 should be highly transparent and capable of being reproduced by qualified persons.”⁶³ Finally, GSA Guidelines “call for identification and documentation of data sets used in producing estimates and projections and clear descriptions of methods used to produce estimates and to develop model projections to make its results as transparent as possible.”⁶⁴ In explaining the purpose behind requiring agencies to be transparent about how analytic results are generated, OMB Guidelines explain that the “more important benefit of transparency is that the public will be able to assess how much an agency’s analytic result hinges on the specific analytic choices made by the agency.”⁶⁵

The challenged information is “influential” because GSA can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Public policy-makers and agency staff may rely on GSA’s representation of environmental impacts associated with the Commercial Building Expansion Project when making decisions about current or future plans. In fact, U.S. Rep. Brian Higgins used GSA’s CE for the Commercial Building Expansion Project as the basis of a press release issued by his office on Nov. 16, 2012,⁶⁶ and the findings of the CE were also documented in an article published by The Buffalo News on Nov. 17, 2012.⁶⁷ In addition, the decision by the Buffalo and Fort Erie Public Bridge Authority to complete the \$20 million Commercial Building Expansion Project was contingent upon the findings of GSA’s CE. GSA can therefore reasonably determine that its CE can have a clear and substantial impact on public and private sector decisions. These express references to GSA’s CE illustrate the influential nature of the assertions that are the subject of this Complaint.

E. THE CHALLENGED INFORMATION IS NON-COMPLIANT BECAUSE IT DOES NOT REPRESENT THE QUALITY—INCLUDING UTILITY AND OBJECTIVITY—REQUIRED BY GSA GUIDELINES AND OMB GUIDELINES.

PEER maintains that the lack of quality of the challenged information means that the information has insufficient utility to the intended audience. “Utility involves the usefulness of

⁶² U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Office of Mgmt. & Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (Feb. 22, 2002).

⁶⁶ Statement from Congressman Brian Higgins on latest Peace Bridge progress, Office of U.S. Rep. Brian Higgins, Nov. 16, 2012, available at <http://higgins.house.gov/media-center/press-releases/statement-from-congressman-brian-higgins-on-latest-peace-bridge-progress>.

⁶⁷ Denise Jewell Gee, *Federal agency gives green light for renovation of Peace Bridge building*, The Buffalo News, Nov. 17, 2012, available at <http://www.buffalonews.com/article/20121117/CITYANDREGION/121119238>.

the information to its intended users.”⁶⁸ If all statements in GSA’s CE for the Commercial Building Expansion Project are to be interpreted as fact, then GSA should cite the source of the information and make available to the public all data used to establish any and all statements and conclusions. Without citations, GSA’s assertions are of limited practical utility to the Government, the public, and the private sector. GSA’s consistent use of vague and unsupported claims can lead to a loss of confidence in GSA’s ability to accurately fulfill its responsibilities under NEPA. Additionally, public policy-makers and private sector decision-makers will make policy and procurement decisions based on misinformation and inaccurate conclusions.

PEER maintains that the challenged information identified in this Complaint fails to meet GSA guideline requirements for Objectivity because the information is not “presented in an accurate, clear, complete, and unbiased manner.”⁶⁹ GSA Guidelines state that objectivity requirements are “achieved by using reliable data sources and sound analytical techniques, and preparing information products that use proven methods by qualified people who carefully reviewed those products.”⁷⁰ However, the challenged information contained in GSA’s CE for the Commercial Building Expansion Project is inaccurate it relies on false and unsubstantiated statements to reach the conclusion that there exists no “extraordinary circumstances” associated with the proposed action that would compel a higher level of environmental review under NEPA.⁷¹

What is more, GSA failed to document the sources of influential information stated in its CE for the Commercial Building Expansion Project. According to GSA Guidelines, “All data sources are identified. When analyses are based on simulation model projections, the assumptions used to produce the projections are also identified as well as the rationale for the assumptions used and the impact of using alternative assumptions.”⁷² As noted in this Complaint, however, GSA used unreliable data sources and unsound analytical techniques^{73,74} and failed to identify “all data sources” as required.⁷⁵ Furthermore, senior GSA officials communicated with multiple political actors—who have a direct and personal interest in Peace Bridge affairs—immediately before and during the development of its CE, opening the possibility that GSA officials were unduly influenced, thus explaining the agency’s flagrant disregard for data integrity.^{76,77}

⁶⁸ U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁶⁹ U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁷⁰ *Id.*

⁷¹ U.S. General Services Administration, *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York* (2012), page 1, available at <http://buffalorising.com/wp-content/uploads/2014/02/GSA-Categorical-Exclusion-2012.pdf>.

⁷² U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁷³ New York State Department of Environmental Conservation, *Interim Report: Phase 1 of the Air Quality Study of the Impact of the Peace Bridge Plaza on the Surrounding Neighborhood*, (Sept. 2013), available at http://www.dec.ny.gov/docs/air_pdf/pbsept2013.pdf.

⁷⁴ Daniel Telvock, *Peace Bridge air study draws concerns*, Investigative Post, Nov. 13, 2013, available at <http://www.investigativepost.org/2013/11/13/peace-bridge-air-study-draws-concerns/>.

⁷⁵ U.S. General Services Administration, Information Quality Guidelines—Section 515 (2002), available at <http://www.gsa.gov/portal/category/21547>.

⁷⁶ See *Enclosure 1*.

F. PEER IS AFFECTED BY THE INFORMATION ERROR.

PEER is a non-profit organization chartered in the District of Columbia with the mission to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity, and upholding professional ethics in the workplace. PEER is an “affected person” in that PEER has thousands of employee and citizen members nationwide, including employees of federal and state public agencies whose work is hampered by reliance upon the inaccurate, incomplete, and poor quality information that is the subject of this Complaint.

G. RECOMMENDATIONS FOR CORRECTION OF THE INFORMATION CHALLENGED BY THIS COMPLAINT.

Accordingly, PEER demands that GSA take the following steps to comply with the Information Quality Act:

1. Immediately notify all applicable federal, state, and local agencies and the Buffalo and Fort Erie Public Bridge Authority that any and all proposed or ongoing actions associated with the Peace Bridge complex—including the New York Gateway Connections Improvement Project—should be suspended until GSA satisfies the demands of this Complaint to prevent further violations of NEPA and the Information Quality Act.
2. Rescind the CE for the Commercial Building Expansion Project, dated Nov. 15, 2012.
3. Issue a public statement, posted on official websites, announcing that GSA has rescinded its CE for the Commercial Building Expansion Project due to violations of the Information Quality Act.
4. Undertake a new externally peer-reviewed NEPA environmental analysis for the Commercial Building Expansion Project that constitutes a full and open environmental review which affords interested agencies, stakeholders, and the public the opportunity to learn about, comment, and influence decision making.
5. Satisfy all requirements of the Information Quality Act to the fullest extent in all future NEPA environmental analyses, with underlying data and methodologies presented in a way that is transparent and reproducible, in accordance with GSA Guidelines and OMB Guidelines.

CONCLUSION

Based on the foregoing information, PEER respectfully requests that the GSA rescind and correct false and unfounded claims contained in its *Categorical Exclusion Checklist Documentation for Renovations and Addition to the Commercial Building, Peace Bridge Plaza, Buffalo, New York*, dated Nov. 15, 2012. Pursuant to the GSA Guidelines, I look forward to your response to this Complaint within 60 days. Thank you in advance for your prompt attention to this matter.

⁷⁷ Denise Jewell Gee, *Federal agency gives green light for renovation of Peace Bridge building*, The Buffalo News, Nov. 17, 2012, available at <http://www.buffalonews.com/article/20121117/CITYANDREGION/121119238>.

Sincerely,

Jeff Ruch
Executive Director

Enclosures