



January 20, 2015

Mr. Jeff Ruch
Executive Director
Public Employees for
Environmental Responsibility
2000 P Street, NW, Suite 240
Washington, DC 20036

Dear Mr. Ruch:

This letter is in response to the appeal you filed on behalf of your organization (i.e., Public Employees for Environmental Responsibility (PEER)), filed on September 17, 2014. Your appeal was in response to my September 11, 2014 letter rejecting PEER's initial complaint, dated May 21, 2014. Your initial complaint was your allegation that a National Environmental Policy Act (NEPA) analysis prepared by Region 2 of the General Services Administration (GSA) did not satisfy the requirements of the Data Quality Act (DQA) as are set forth in the *Treasury and General Government Appropriation Act for Fiscal Year 2001* (Public Law 106-554;H.R.5658), and implemented by the Office of Management and Budget (OMB) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information* (67 Fed. Reg.8452, Feb. 22, 2002), and GSA's implementing guidelines found at: <http://www.gsa.gov/portal/content/104725>.

PEER's complaint questioned the quality of the data relied upon in a Checklist Categorical Exclusion (CATEX) NEPA analysis prepared by Region 2 in November, 2012. That CATEX was prepared in support of a GSA proposal to amend a long-standing lease of the Peace Bridge Commercial Warehouse, Buffalo, New York, an inspection and administrative building used by other federal agencies who conduct operations within this structure in support of border operations (where the United States is only a lessee and had been a continuous lessee for more than 28 years). This building is owned by the Peace Bridge Authority, an entity jointly created by the State of New York and by the Government of Canada. The 2012 lease amendment action involved a need to address a number of improvements to this structure to be conducted by the Peace Bridge Authority, at its sole expense. GSA activities on and our relationship with this limited property interest, and the Peace Bridge Plaza at large, have not changed since our 2012 CATEX.

Your administrative appeal focuses primarily on your opinion that GSA's 2012 CATEX was subject to the DQA, as a document that had been "disseminated" - a term found in both the DQA and OMB's Guidelines. However, OMB specifically defines "dissemination" to mean agency-initiated or sponsored distribution of information to the public, and that does not include, "distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law." OMB further clarifies that "dissemination" does not include "distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes."

CATEXes, as prepared within GSA, consistent with our regulations, are not intended for public notice and comment. In addition, this CATEX in particular, was not "disseminated" by GSA in the course of its preparation or use - as the term "dissemination" is defined above by OMB. In regard to our NEPA analysis for the Peace Bridge Commercial Warehouse, GSA appropriately determined that GSA's Checklist CATEX 5.4(b) was available to cover the proposed action, the lease amendment at the Commercial Warehouse. GSA also appropriately concluded in applying this CATEX to the facts of this proposed action that there were no "extraordinary circumstances" that compelled a more detailed level of NEPA analysis (i.e., an Environmental Assessment or an Environmental Impact Statement). The fact that the CATEX was provided to others, when requested and/or provided as part of correspondence, does not make it "disseminated" information as defined by OMB guidelines. GSA's providing the Checklist CATEX to others, in fact, falls under the dissemination exemptions contained within the OMB implementing guidelines.

We reaffirm that the CATEX was the appropriate NEPA analysis for the lease amendment for the Peace Bridge Commercial Warehouse and that the CATEX was an internal document and was not disseminated information, as defined by the OMB guidelines; nor was it intended for public review and comment, consistent with GSA's NEPA implementing standards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sonny Hashmi', with a long, sweeping horizontal line extending to the right.

Sonny Hashmi
Chief Information Officer