

Title 332 WAC

NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters

332-18	Surface mine reclamation.
332-41	SEPA policies and procedures.
332-100	Leases, sales, rights of way, etc.

Chapter 332-18 WAC

SURFACE MINE RECLAMATION

WAC

332-18-145	Blanket performance security—Rules to obtain and maintain a blanket performance security for multiple surface mines.
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WAC 332-18-145 Blanket performance security—Rules to obtain and maintain a blanket performance security for multiple surface mines. (1) A permit holder or landowner may use a blanket performance security for multiple surface mines if authorized by DNR under RCW 78.44-350 and this rule. The amount must equal the sum of the estimated reclamation cost calculated by DNR for the two covered surface mines with the largest performance security obligations. The process for obtaining DNR's approval includes a preliminary review, submittal of a complete request, and DNR review of a complete request.

(2) A permit holder or landowner must first request DNR's preliminary review of eligibility and the state of the proposed surface mines. The request shall identify permit holders and proposed surface mines by permit number, if any. DNR will issue a preliminary review decision on each mine indicating which mines would be eligible within sixty days. The preliminary review period may be extended by DNR with written notice to the applicant. If any requested sites are denied after the preliminary review, the DNR will state in writing why the site was denied and the applicant may request a meeting and/or reapply for preliminary review.

(a) A permit holder must meet the following conditions for it or the landowner to be eligible to submit and continue to use a blanket performance security:

(i) The permit holder must not be in violation of any final order of DNR;

(ii) The permit holder must have held at least one valid reclamation permit for longer than ten years;

(iii) The permit holder must demonstrate exemplary mining and reclamation practices that have been accepted by DNR. For purposes of this rule, "exemplary" means that the permit holder is substantially complying with chapters 78.44 RCW and 332-18 WAC, its effective reclamation permit and plan, and department orders for each of its surface mines and that the permit holder has not received more than two enforcement orders within the most recent calendar year;

(iv) The permit holder must, before obtaining a blanket performance security and every other year thereafter, submit a sworn statement by a responsible company official under penalty of perjury for false or misleading statements that the permit holder is financially able to pay for the DNR-approved estimated reclamation cost of all covered surface mines within one year; and

(v) The permit holder must before obtaining and every other year thereafter, submit an updated reclamation cost estimate on DNR's Standard Performance Security Calculation Form (SM-10) for each covered surface mine.

(b) Proposed sites must not include metal or fuel surface mines.

(c) To determine the likelihood of approval, DNR shall consider the permit holder's current and past compliance history in addition to the state of the existing surface mines of the permit holder. DNR may deem a surface mine "inappropriate" for coverage if inconsistent with (b) of this subsection or any of the following factors:

(i) The reclamation plan for the surface mine should be appropriate for the site's conditions and chapter 78.44 RCW;

(ii) The surface mine should be in substantial compliance with its effective reclamation permit and plan;

(iii) The surface mine condition should satisfy all of the topsoil requirements stated in the applicable reclamation permit and plan.

(3) If eligible, a permit holder or landowner may request DNR's acceptance of a blanket performance security by submitting all of the following items:

(a) An acceptable and adequate performance security on a DNR-approved form that equals the sum of the reclamation security calculated by the DNR for the two covered surface mines with the largest performance security obligations.

(b) A DNR Risk of Lien Form, signed by all landowners; and

(c) The estimated reclamation cost on a DNR Standard Performance Security Calculation Form (SM-10) for each included surface mine. Thereafter, the permit holder providing the blanket performance security shall submit documentation per subsection (2)(a)(iv) and (v) of this section. DNR shall review and confirm or correct each estimated reclamation cost according to its form and RCW 78.44.087.

(4) DNR may only approve a request for a blanket performance security when the request contains all required documents, is accurate, complete, and is submitted by or on behalf of eligible permit holders. DNR shall further consider the factors identified in subsection (2)(b) and (c) of this section. DNR will provide a written decision approving or disapproving the request, which is appealable.

(5) If surface mine conditions change so that the cumulative estimated reclamation cost for any two covered surface mines is greater than the initially calculated amount, the blanket performance security must be increased. DNR may recalculate estimated reclamation costs and may require a new blanket performance security under RCW 78.44.087 and 78.44.350.

(6) DNR may require substitute individual performance securities for all covered surface mines if the permit holder loses eligibility under subsection (2) of this section. Further, DNR may require a substitute individual performance security for each surface mine that becomes inappropriate for blanket coverage. The permit holder shall comply with the DNR written substitute performance security demand within thirty days of notice. DNR may require the substitute performance security until the permit holder regains eligibility or the surface mine is restored to an appropriate condition for blanket coverage. DNR may use the blanket security for the reclamation of any originally covered surface mine unless DNR approves cancellation of the original blanket performance security or approves a substitute blanket performance security excluding that surface mine.

[Statutory Authority: RCW 78.44.350 and 78.44.040. 08-01-006, § 332-18-145, filed 12/6/07, effective 1/6/08.]

Chapter 332-41 WAC

SEPA POLICIES AND PROCEDURES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-41-420	EIS preparation. [Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-420, filed 9/5/84. Formerly WAC 332-40-420.] Repealed by 07-08-021, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules.
332-41-508	Notice of environmental documents. [Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-508, filed 9/5/84. Formerly chapter 332-40 WAC.] Repealed by 07-08-021, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules.
332-41-920	Agencies with environmental expertise. [Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-920, filed 9/5/84. Formerly chapter 332-40 WAC.] Repealed by 07-08-021, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules.

WAC 332-41-010 Authority. The department of natural resources adopts these rules under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature author-

ity to adopt rules. 07-08-021, § 332-41-010, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-010, filed 9/5/84. Formerly WAC 332-40-010.]

WAC 332-41-020 Adoption by reference. The department of natural resources adopts the following sections or subsections of chapter 197-11 WAC by reference.

WAC

197-11-040	Definitions.
197-11-050	Lead agency.
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197-11-060	Content of environmental review.
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197-11-080	Incomplete or unavailable information.
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197-11-100	Information required of applicants.
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197-11-390	Effect of threshold determination.
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197-11-405	EIS types.
197-11-406	EIS timing.
197-11-408	Scoping.
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197-11-420	EIS preparation.
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197-11-442	Contents of EIS on nonproject proposals.
197-11-443	EIS contents when prior nonproject EIS.
197-11-444	Elements of the environment.
197-11-448	Relationship of EIS to other considerations.
197-11-450	Cost-benefit analysis.
197-11-455	Issuance of DEIS.
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197-11-500	Purpose of this part.
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197-11-504	Availability and cost of environmental documents.
197-11-510	Public notice.
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197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.
197-11-600	When to use existing environmental documents.
197-11-610	Use of NEPA documents.
197-11-620	Supplemental environmental impact statement—Procedures.
197-11-625	Addenda—Procedures.
197-11-630	Adoption—Procedures.
197-11-635	Incorporation by reference—Procedures.

197-11-640	Combining documents.	197-11-922	Lead agency rules.
197-11-650	Purpose of this part.	197-11-924	Determining the lead agency.
197-11-655	Implementation.	197-11-926	Lead agency for governmental proposals.
197-11-660	Substantive authority and mitigation.	197-11-928	Lead agency for public and private proposals.
197-11-680	Appeals.	197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-700	Definitions.	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-702	Act.	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-704	Action.	197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-706	Addendum.	197-11-938	Lead agencies for specific proposals.
197-11-708	Adoption.	197-11-940	Transfer of lead agency status to a state agency.
197-11-710	Affected tribe.	197-11-942	Agreements on lead agency status.
197-11-712	Affecting.	197-11-944	Agreements on division of lead agency duties.
197-11-714	Agency.	197-11-946	DOE resolution of lead agency disputes.
197-11-716	Applicant.	197-11-948	Assumption of lead agency status.
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197-11-720	Categorical exemption.	197-11-965	Adoption notice.
197-11-722	Consolidated appeal.	197-11-970	Determination of nonsignificance (DNS).
197-11-724	Consulted agency.	197-11-980	Determination of significance and scoping notice (DS).
197-11-726	Cost-benefit analysis.	197-11-985	Notice of assumption of lead agency status.
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197-11-730	Decision maker.		
197-11-732	Department.		
197-11-734	Determination of nonsignificance (DNS).		
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197-11-740	Environment.		
197-11-742	Environmental checklist.		
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197-11-746	Environmental review.		
197-11-750	Expanded scoping.		
197-11-752	Impacts.		
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197-11-760	License.		
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[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-020, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-020, filed 9/5/84.]

WAC 332-41-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Assistant region manager" means a principal assistant to a region manager with responsibility for either regulatory or proprietary programs.

(2) "Commissioner" means the commissioner of public lands, who is the administrator of the department of natural resources as established by chapter 43.30 RCW.

(3) "Division" means any one of the principal units of DNR that administers a program and is designated on DNR's management chart as a "division."

(4) "Division manager" means the person with overall responsibility for the functioning of one of DNR's divisions.

(5) "DNR" means the Washington state department of natural resources.

(6) "Environmental coordinator" means the DNR's designated SEPA environmental assistant division manager, and designees such as DNR SEPA center personnel, designated to help the responsible official comply with SEPA procedures for DNR.

(7) "Notice of final determination" means a DNR document that provides the status of a threshold determination and states whether a threshold determination was retained as final, modified, withdrawn, or delayed.

(8) "Proponent" means applicant, as defined in WAC 197-11-716, or a party with a proposal, as defined in WAC 197-11-784.

(9) "Public lands" means lands of the state of Washington administered by DNR, including but not limited to state lands, state forest lands, and aquatic lands as defined in chapters 79.02, 79.70 and 79.71 RCW.

(10) "Region manager" means the person responsible for the administration of a geographic field unit, as designated by the management organizational chart of DNR. They supervise assistant region managers.

(11) "SEPA center" means the DNR section responsible for printing, mailing, retaining SEPA documents, and coordination of the SEPA process. The SEPA center is located at Washington Department of Natural Resources, 1111 Washington Street S.E., Olympia, Washington 98504-7015.

(12) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.020, and 79.22.040.

(13) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by DNR or managed under RCW 79.105.420 by a port district and as defined in RCW 79.105.060.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-040, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-040, filed 9/5/84. Formerly WAC 332-40-040.]

WAC 332-41-055 Additional timing considerations.

(1) **How does this section relate to WAC 197-11-055?** This section integrates SEPA review into DNR's activities consistent with WAC 197-11-055, which DNR has incorporated by reference.

(2) **What are DNR's SEPA considerations prior to issuance of the threshold determination?** DNR should conduct SEPA review consistent with the following guidelines:

(a) **When is lead agency determined?** DNR should determine whether DNR or another agency is the SEPA lead agency within five working days of receiving the nonexempt proposal. See WAC 197-11-050 and 197-11-922 through 197-11-940. If DNR is not the lead agency, DNR shall send the complete environmental checklist and a copy of the permit application or proposal to the lead agency with an explanation of why DNR identified the agency as the lead agency.

(b) **When is exempt status determined?** When DNR receives a permit application or proposal, the agency shall promptly determine whether DNR's SEPA action is "categorically exempt" or statutorily exempt from SEPA. If exempt, and WAC 197-11-305 does not remove categorical exempt status, DNR has no further obligation under SEPA.

(c) **Under what circumstances does DNR request an environmental checklist?** If DNR's action is not exempt and DNR is the lead agency, DNR shall ask the proponent to complete an environmental checklist.

(d) **When does DNR not need an environmental checklist?** A checklist is not needed if DNR and the proponent agree an EIS is required, SEPA compliance has been completed, or a NEPA document was completed and found adequate for SEPA requirements.

(e) **When will DNR start environmental review of non-DNR proposals?** DNR shall start a threshold environmental review when DNR receives an application and associated completed environmental checklist.

(f) **When will DNR start environmental review of DNR proposals?** DNR should commence the threshold environmental review of DNR proposals that do not involve a DNR permit when a completed checklist is submitted and the principal features of the proposal and its environmental impacts can be reasonably identified.

(3) **When may an applicant request preliminary SEPA review and what are the consequences?** DNR shall accept applicant requests for preliminary environmental review before requiring detailed project plans and specifications when DNR's only action is a decision on a permit that requires detailed project plans and specifications. DNR may accept other applicant requests for preliminary environmental review when DNR deems it appropriate. This preliminary review will be advisory only and not binding on the department. Final review and determination will be made only upon receipt of all essential detailed project plans and specifications. DNR shall conduct a preliminary environmental review when it receives a request for preliminary review along with the following information:

(a) Site-specific maps containing clear proposal boundaries and clear topographic details;

(b) Complete and accurate description of the proposal; and

(c) Any other information that may be required under WAC 197-11-100 and 197-11-335.

(4) **When should DNR commence internal SEPA discussions regarding DNR proposals?** If DNR initiated the environmental action, DNR shall coordinate among appropriate staff, including the SEPA center, as necessary. SEPA discussions should be coordinated with staff as soon as a proposal starts being developed.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-055, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-055, filed 9/5/84. Formerly WAC 332-40-055.]

WAC 332-41-310 Threshold determination required.

(1) **What are the timing requirements for threshold determinations?** WAC 197-11-310 requires that a threshold determination (either of nonsignificance or significance) be made no later than ninety days after the application and supporting documentation are determined to be complete. In most cases, DNR should complete a threshold determination within fifteen days, if possible, except for Class IV forest practices, in which case the threshold determination shall be made within ten days of receiving a complete application, including a complete environmental checklist. Complex proposals, those where additional information is needed, and/or those accompanied by an inaccurate checklist may require additional time. Upon request by a proponent, the responsible official shall select a date for making the threshold determination and notify the proponent of such date in writing.

(2) **When should DNR issue a notice of final determination?** A notice of final determination should be issued

after the SEPA comment period for an initial determination of nonsignificance.

(a) This notice should document whether the determination has been:

- (i) Retained;
- (ii) Modified;
- (iii) Delayed; or
- (iv) Withdrawn.

(b) After an initial threshold determination is delayed, another notice of final determination should be issued to identify whether the proposal has been retained, modified or withdrawn.

(c) Any notice of final determination should be sent to the original mailing list for the proposal and to any additional parties that commented on the proposal.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-310, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-310, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-350 Mitigated determination of nonsignificance (DNS). (1) How may a proponent request an early notice of a determination of significance (DS)? When DNR is the lead agency, a proponent may ask DNR whether issuance of a DS is likely for a proposal. A non-DNR request for early notice must satisfy three requirements. The request:

- (a) Must be in writing;
- (b) Shall follow submission of a permit application, if applicable, and environmental checklist; and
- (c) Must be received by DNR before DNR issues an initial threshold determination for the proposal.

(2) How should DNR respond to an early notice request? The responsible official or designee should respond to a request for early notice within ten business days of receipt. DNR should respond to a forest practices applicant as soon as possible because RCW 76.09.050 only allows ten days to conduct a threshold evaluation. If DNR is not the proposal's proponent, the response shall meet the following requirements:

- (a) The response must be in writing;
- (b) The response shall state whether DNR is considering issuance of a DS;
- (c) The response shall indicate the general or specific area(s) of concern that led DNR to consider a DS; and
- (d) The response shall state that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) How should early review requests and responses to DNR proposals be processed? If a project leader from within DNR requests early notice, it is advisable that both the request and the response be documented in writing for tracking purposes.

(4) What is the review process for proposals pending a request for early notice? DNR shall continue to conduct SEPA review on the originally submitted proposal until a proposal's proponent requests, in writing, that the proposal be changed or clarified.

(5) What should DNR review when changes or clarifications are added to a proposal? If a proponent submits changes or clarifications under this section, DNR shall review these changes or clarifications as part of the proposal.

(a) If DNR's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the proponent changes or clarifies the proposal to include all of those specific mitigation measures, DNR shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350.

(b) If DNR indicates general or specific areas of concern, but does not indicate specific mitigation measures that would allow it to issue a DNS, DNR shall determine if the changed or clarified proposal may have a probable significant environmental impact, and issue a DNS or DS, as appropriate.

(6) May DNR propose mitigation to reduce impacts of the proposal? Even without a request for early notice, DNR may specify mitigation measures that would allow DNR to issue a DNS. If a proponent changes or clarifies the proposal to include DNR's proposed measures, DNR shall issue a DNS consistent with WAC 197-11-350 and circulate it for review.

(7) How may a proponent change a proposal? When a proponent changes or clarifies the proposal, the changes or clarifications may be added as attachments to previously submitted documents. If the environmental checklist and supporting documents would be difficult to read and/or understand in conjunction with the attachment(s), DNR may require the applicant to submit a new checklist.

(8) May DNR change its own proposals? DNR may change or clarify features of its own proposals before making the threshold determination consistent with WAC 197-11-350.

(9) What is the effect of preliminary discussions? DNR's indication that a DS appears likely shall not be construed as a determination of significance. DNR's preliminary discussion of possible clarification or changes shall not bind DNR in making a determination of nonsignificance.

(10) When should DNR issue a notice of final determination for a mitigated determination of nonsignificance? DNR should issue a notice of final determination after the SEPA comment period has ended. This notice should document whether the determination has been:

- (a) Retained;
- (b) Modified;
- (c) Delayed; or
- (d) Withdrawn.

(i) If an initial threshold determination is delayed, DNR should issue another notice of final determination to identify whether the proposal has been retained, modified or withdrawn.

(ii) DNR should send any notice of final determination to the original mailing list for the proposal and any additional parties that commented on the proposal.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-350, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-350, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-421 EIS preparation under DNR direction. DNR normally requires a proponent to prepare or help prepare draft, final, and supplemental EISs at the proponent's expense. An outside consultant may be used to complete an EIS only if DNR and the proponent mutually agree upon the consultant. Any proponent or consultant preparing an EIS shall do so under DNR's direction.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-421, filed 3/27/07, effective 4/27/07.]

WAC 332-41-504 Availability, distribution, and costs of environmental documents. (1) **Where are SEPA documents retained?** SEPA documents required by these rules shall be retained by DNR at the SEPA center, and made available in accordance with chapters 42.17 RCW and 197-11 WAC, Part V.

(2) **How does DNR distribute SEPA documents?** When DNR is the lead agency, DNR personnel shall distribute SEPA documents as required by chapter 197-11 WAC unless another agency is nominal co-lead with DNR. The following are acceptable methods of distribution:

(a) E-mail environmental documents including attached checklists and backup materials provided the recipient agency or interested party has made its e-mail address available to DNR;

(b) Mail environmental documents, including attached checklists and backup materials, on CDs or as hardcopies to agency mailing lists that include either general lists or lists for specific proposals or subject areas.

(3) **May DNR charge for multiple copies?** A requestor asking for additional hard copies of a SEPA document may be required to pay additional copying fees per WAC 197-11-504, 332-10-090 and 332-10-170, and RCW 42.17.300.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-504, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-504, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-505 Notice of environmental documents. (1) **What documents will be submitted to the department of ecology?** As required under WAC 197-11-508 for state agencies, DNR shall submit the following environmental documents to the department of ecology for publication in the SEPA register:

- (a) DNSs under WAC 197-11-340;
- (b) DSs (scoping notices) under WAC 197-11-408;
- (c) EISs under WAC 197-11-455, 197-11-460, and 197-11-620;
- (d) Adoption notices to the extent required by WAC 197-11-610 and 197-11-630; and
- (e) Notices of action under RCW 43.21C.080 and 43.21C.087.

(2) **What is the timing to submit documents to the SEPA register?** DNR shall submit the environmental documents listed in subsection (1) of this section promptly and in accordance with procedures established by the department of ecology. According to WAC 197-11-340, DNR shall send the document to the department of ecology on the date of issue of the threshold determination.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-505, filed 3/27/07, effective 4/27/07.]

WAC 332-41-510 Public notice requirements. (1) **What are DNR's reasonable notice requirements?** DNR shall use reasonable methods to inform the public when DNR issues a DNS under WAC 197-11-340, a mitigated DNS under WAC 197-11-350, a scoping notice under WAC 197-11-360, a draft EIS under WAC 197-11-455, a draft supplemental EIS under WAC 197-11-620, a final EIS under WAC 197-11-460, or when DNR schedules a public hearing under WAC 197-11-502, 197-11-535, and 197-11-610. DNR shall use two or more of the following reasonable methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements associated with DNR's non-SEPA decision (underlying governmental decision), public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notify persons or groups who have expressed interest in the proposal or in the type of proposal being considered, who have expressed interest in proposals located in the affected geographic area, and who DNR has identified as potentially interested parties;

(b) Publish a notice in a newspaper of general circulation in the area in which the proposal will be implemented;

(c) Post the property with appropriate signage;

(d) Post notices and environmental documents on DNR's SEPA center web site.

(2) **What if there are existing notice procedures regarding DNR's governmental decisions?** Whenever possible, DNR shall integrate the public notice required under this section with existing notice procedures for DNR permits or approvals required for the proposal. DNR must comply with WAC 197-11-502 (Inviting comment), WAC 197-11-508 (SEPA register), and WAC 197-11-510 (Public notice).

(3) **How are watershed analysis public notices issued?** To receive forest practice approval, DNR allows thirty days to review and provide public input on proposed watershed prescriptions. DNR through its SEPA center must also give public notice and provide for public comments on a non-project SEPA review of the proposed watershed analysis to assess environmental impacts as provided under RCW 43.21C.260. As directed in subsections (1) and (2) of this section for providing public notice, DNR uses two concurrent pathways to solicit public comment on watershed analysis. DNR requests public comments to be:

(a) Sent to DNR on watershed analysis prescriptions consistent with forest practice rules under WAC 222-10-035 and 222-22-080; and

(b) Sent to the SEPA center on environmental impacts consistent with SEPA.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-510, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-510, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-665 Policies and procedures for conditioning or denying permits or other approvals. (1) **What are DNR's specific policies for conditioning or denying**

permits or approvals? DNR adopts the following SEPA policies:

(a) Geothermal resources. DNR recognizes the need to protect the public from geothermal drilling effects such as the contamination of the ground water, the surface water, the possibility of a blowout, fire hazards, drilling fluids, and surface disturbance. DNR may, when necessary, condition the following aspects of a drilling operation to mitigate specific adverse environmental impacts:

- (i) Location of the well;
- (ii) Casing program;
- (iii) Makeup of drilling fluids.

(b) Surface mining. To provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration, the following aspects of surface mining may be conditioned:

- (i) Proposed practices to protect adjacent surface resources, including but not limited to soil and water;
- (ii) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
- (iii) Matter and type of revegetation or other surface treatment of disturbed areas;
- (iv) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or pose a hazard to plant, animal, fish, or human life in or adjacent to the area;
- (v) Method of control of contaminants and disposal of surface mining refuse;
- (vi) Method of diverting surface waters around the disturbed areas;
- (vii) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution.

(c) Upland and aquatic right of way grants. Recognizing that construction and/or reconstruction under upland and aquatic right of way grants can create adverse impacts to the elements of the environment, it is the policy of DNR to condition grants where necessary and where allowed by state and federal law:

- (i) To protect all surface resources including but not limited to soil and water, through authorized right of way operations on public lands, and to cause on a continuing basis the rehabilitation or reestablishment of the vegetative cover, soil stability and water condition appropriate to intended subsequent use of the area;
- (ii) To meet air quality standards;
- (iii) To protect recreational and special use areas under lease; and
- (iv) To meet obligations under DNR's habitat conservation plans, any amendments to DNR's habitat conservation plans, or the *Policy for Sustainable Forests* adopted in 2006, and any future updates to the policy.

(d) State-owned aquatic lands. In managing state-owned aquatic lands, DNR shall consider the natural values of state-owned aquatic land such as wildlife habitat, natural area preserves, representative ecosystems, or spawning area prior to issuing any initial lease or authorizing any change in use.

(i) DNR may refrain from leasing lands that it finds to have significant natural values, as described in this subsection, or may provide within any lease for the protection of such values.

(ii) DNR may condition its proposals to meet its obligations under any future aquatic habitat conservation plan, or any amendments to DNR's aquatic habitat conservation plans.

(e) Public lands leases and contracts. Under authority granted by chapters 79.02, 79.13, 79.14, 79.15, 79.22 and 79.105 RCW, DNR may set any lease or contract terms and conditions that are consistent with state law. For public lands, DNR may condition or withhold a lease or contract where significant adverse environmental impacts associated with a lease proposal or contract proposal will occur. DNR may condition its proposals to meet its obligations under any current or future habitat conservation plan, or any amendments to DNR's habitat conservation plans, or the *Policy for Sustainable Forests* adopted in 2006, and any future updates to the policy.

(f) Timber sales. Department policies for the sale of timber from public lands are found under DNR's habitat conservation plans, any amendments to DNR's habitat conservation plans, or in the *Policy for Sustainable Forests* adopted in 2006 and any future updates to the policy.

(g) Forest practices. SEPA policies related to the review of environmental impacts, conditioning, and disapproval of forest practices are adopted by the forest practices board and are contained in chapter 222-10 WAC. WAC 222-10-010 adopts by reference policies of SEPA as set forth in RCW 43.21C.020. WAC 222-10-050 adopts by reference the *SEPA Rules* adopted by the state of Washington department of ecology, chapter 197-11 WAC, except those rules that may not be applicable.

(2) What are DNR's general policies for conditioning or denying permits or approvals? The policies set out in subsection (1) of this section do not anticipate all situations which may result in placing conditions on a permit or denial of a proposal following environmental review. DNR therefore adopts the policies set forth in the State Environmental Policy Act, RCW 43.21C.020, as further basis for conditioning or denying a public or private proposal under SEPA. Those policies are to:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all people of Washington safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural, and natural aspects of our national heritage;
- (e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) **What procedures must DNR follow to condition or deny a proposal?** DNR must follow the procedures in RCW 43.21C.060 and WAC 197-11-660 when conditioning or denying permits or other approvals under SEPA. Conditioning must be in writing and may be added only to mitigate specific adverse environmental impacts that are identified in the environmental document. To deny a proposal under SEPA, DNR must find that the proposal will result in significant adverse impacts as identified in a final EIS or final supplemental EIS, and that reasonable mitigation measures are insufficient to mitigate any identified impact.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-665, filed 3/27/07, effective 4/27/07. Statutory Authority: RCW 43.21C.120 and chapter 34.05 RCW. 93-01-126 (Order 607), § 332-41-665, filed 12/21/92, effective 1/21/93. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-665, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-833 Timber sales categories. (1) **What is DNR's authority to determine which timber sale decisions are exempt from SEPA review?** Under WAC 197-11-830 DNR may determine which decisions to sell timber from public lands do not have potential for significant impact on the environment. Such decisions are categorically exempt from the threshold determination and EIS requirements of SEPA under WAC 197-11-830. This determination applies only to DNR's decision to sell timber harvested from public lands not requiring approval from the board of natural resources.

(2) **What is the threshold for determining that timber sale decisions are exempt from SEPA?**

(a) The following DNR timber sale decisions do not have a potential for significant impact on the environment and are categorically exempt from SEPA:

(i) Timber sales containing harvest units of less than twenty acres that DNR appraises to be less than the amount specified in RCW 79.11.130; and

(ii) Thinning or salvage timber sales of any unit size that DNR appraises to be less than the amount specified in RCW 79.11.130.

(b) These sales are small sales not requiring approval by the board of natural resources and have low volume and low acreage. DNR has not extended this determination to sales requiring approval by the board of natural resources because of the public values associated with public lands. However, this determination is not intended to alter DNR's SEPA compliance responsibility for regulatory decisions concerning forest practice applications for state and private lands under RCW 76.09.050 and WAC 222-16-050.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-833, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-833, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-910 Designation of responsible official.

(1) **Who may serve as DNR's SEPA responsible official?** Since the responsible official shall carry out duties and functions for the purpose of assuring DNR's compliance with SEPA and the SEPA rules, it is important that DNR clearly designates who will be the responsible official for a proposal.

(a) DNR's responsible official will be as follows:

(i) Division manager;

(ii) Designated region manager; or

(iii) Designated assistant region manager.

(b) The responsible official for the harbor line commission shall be the division manager of the aquatic resources division.

(c) When the region manager or assistant region manager is involved with the proposal, or during emergencies, i.e., fire season, it may be necessary to assign the responsible official duties for a proposal to a region manager in another region. The division manager may also assume responsible official duties for the proposal.

(d) When potentially significant conflicting DNR interests exist involving DNR proposals that converge at the division manager or region manager level, or the proposal involves more than one region, a superior management-level official may act as the responsible official. See subsection (4) of this section for recommended qualifications.

(2) **What are the responsible official's duties?** When DNR is the lead agency, the responsible official shall review the environmental checklist and make the threshold determination in compliance with this chapter, chapters 43.21C RCW and 197-11 WAC, and specifically, WAC 197-11-330.

(3) **What other procedural requirements must be followed?** The responsible official shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate. This includes notice and circulation requirements for threshold determinations.

(4) **What are the general qualifications of a DNR responsible official?** The responsible official shall not be the applicant, project leader, or the decision maker for the proposal. The official shall have general technical expertise sufficient to assess the impacts of the proposal.

(5) **What if a determination of significance is issued?** When an environmental impact statement is required based on the threshold determination, scoping and EIS preparation under chapter 197-11 WAC shall occur under direction of the responsible official.

[Statutory Authority: Chapters 43.21C, 34.05 RCW, WAC 197-11-902(2), [197-11]-904(1) and delegation order, November 5, 2001, signature authority to adopt rules. 07-08-021, § 332-41-910, filed 3/27/07, effective 4/27/07. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-910, filed 9/5/84. Formerly chapter 332-40 WAC.]

Chapter 332-100 WAC

LEASES, SALES, RIGHTS OF WAY, ETC.

WAC

332-100-040 Deduction determination.

WAC 332-100-040 Deduction determination. (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct up to the maximum percentages as provided for in RCW 79.64.-040 and related statutes. Except for transactions involving

aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW.

[Statutory Authority: RCW 79.64.040. 07-17-031, § 332-100-040, filed 8/7/07, effective 9/7/07; 06-03-016, § 332-100-040, filed 1/6/06, effective 2/6/06; 83-11-008 (Order 398, Resolution No. 419), § 332-100-040, filed 5/6/83, effective 6/30/83; 78-10-039 (Order 308, Resolution No. 241), § 332-100-040, filed 9/18/78.]