

# Chapter 344-18 WAC

## GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

**WAC**

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**WAC 344-18-010 Authority.** These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-010, filed 1/7/85.]

**WAC 344-18-020 Adoption by reference.** Except as modified by this chapter, the committee adopts the SEPA rules, chapter 197-11 WAC, adopted by the Washington department of ecology as modified or amended from time to time.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-020, filed 1/7/85.]

**WAC 344-18-030 Purpose.** This chapter implements the statewide rules in chapter 197-11 WAC as they apply to the committee.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-030, filed 1/7/85.]

**WAC 344-18-040 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) Commissioner means the commissioner of public lands who is the administrator of the department of natural resources as established by chapter 43.30 RCW.

(2) Committee means the oil and gas conservation committee.

(3) Department means the Washington state department of natural resources, acting solely as the designated agent of the committee, subject to the direction and control of the committee. All functions carried out under these rules by the department shall be considered those of the committee. Such functions may be directly performed by the committee.

(4) Environmental coordinator means the person who coordinates SEPA compliance procedures for the department and the committee.

(5) Supervisor means the state oil and gas supervisor who is designated by the department and is charged with duties as may be delegated by the department.

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[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-040, filed 1/7/85.]

**WAC 344-18-055 Timing of the SEPA process.** (1) Distribution to planning commissions and advisory bodies. Environmental documents required to be submitted to the department of ecology under provisions of WAC 197-11-508 will also be submitted to affected planning commissions and similar advisory bodies within the respective time frames as established by these rules and chapter 197-11 WAC.

(2) Timing of review of proposals. Environmental review will be made upon receipt of a completed license application and environmental checklist.

(3) Additional timing considerations.

(a) Department staff receiving a license application will determine whether the proposal is an "action" and if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the staff person will ask the applicant to complete an environmental checklist. A checklist is not needed if the department and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application.

(b) If an action is a decision on a license which requires detailed project plans and specifications, the department shall provide, upon request by the applicant, preliminary environmental review prior to submittal of detailed plans and specifications. This preliminary review will be advisory only and not binding on the department. Final review and determination will be made only upon receipt of detailed project plans and specifications if these are essential to a meaningful environmental analysis.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-055, filed 1/7/85.]

**WAC 344-18-350 Mitigated DNS.** (1) An applicant may ask the department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a license application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(2) The responsible official or designee shall respond to the request; the response shall:

(a) Be written;

(b) State whether the department is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the department to consider a DS; and

(d) 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) The department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the department will make its threshold determination based on the changed or clarified proposal.

(a) If the department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the department shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-340(2).

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

(5) The department or the committee may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the department shall issue a DNS and circulate it for review under WAC 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the department may require the applicant to submit a new checklist.

(7) The department may change or clarify features of its own proposals before making the threshold determination.

(8) The department's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarification or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a license for all purposes, including enforcement of the license. Unless the department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-350, filed 1/7/85.]

**WAC 344-18-420 EIS preparation.** For draft and final EISs and SEISs:

(1) Normally, the department will prepare EISs for its own proposals.

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(2) For applicant proposals, the department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of these rules and chapter 197-11 WAC.

(3) The department may require an applicant to provide information that the department does not possess, including specific investigations. The applicant is not required to supply information that is not required under these rules.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-420, filed 1/7/85.]

**WAC 344-18-504 Availability and costs of environmental documents.** (1) SEPA documents required by these rules shall be retained by the department at the department's SEPA public information center.

(2) The department shall make copies of environmental documents available in accordance with chapter 42.17 RCW, charging only those costs allowed plus mailing costs. Allowable costs for environmental documents may be indicated in the documents and made payable to the department.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-504, filed 1/7/85.]

**WAC 344-18-510 Public notice requirements.** (1) The department shall give public notice when issuing a DNS under WAC 197-11-340(2), a mitigated DNS under WAC 344-18-350, a scoping notice under WAC 344-18-360, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the department shall integrate the public notice required under this section with existing notice procedures for the required license.

(3) The department shall use one 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 for the license, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notifying persons or groups who have expressed interest in the proposal, in the type of proposal, or proposals in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(c) Posting the property.

(4) The department may require an applicant to perform the public notice requirement at his or her expense.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-510, filed 1/7/85.]

**WAC 344-18-665 Policies for conditioning or denying licenses.** (1) Policies - General. The committee adopts by reference policies of the State Environmental Policy Act as expressed in RCW 43.21C.020.

(2) Policies - Specific. The committee and the department recognize the need to protect the public from oil and gas drilling effects such as but not limited to the contamination of the groundwater, the surface water, the possibility of a blow-out, fire hazards, drilling fluids contamination, and surface disturbance. The decisionmaker may, when necessary, condition any license to mitigate specific adverse environmental

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impacts identified in an environmental document on a proposal. The decisionmaker may deny a license for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and denial is consistent with the Oil and Gas Conservation Act, the State Environmental Policy Act, and the public interest.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-665, filed 1/7/85.]

**WAC 344-18-910 Designation of responsible official.**

(1) The responsible official for any action taken by the committee or department in connection with the implementation of chapter 78.52 RCW shall be the supervisor.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-910, filed 1/7/85.]

**WAC 344-18-950 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 43.21C.120. 85-03-016 (Order 5, Resolution No. 9), § 344-18-950, filed 1/7/85.]

