

# Chapter 173-802 WAC

## SEPA PROCEDURES

### WAC

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**WAC 173-802-010 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 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-010, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-020 Adoption by reference.** The department of ecology adopts the following sections or subsections of chapter 197-11 WAC by reference.

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[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-020, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-030 Purpose.** This chapter implements the statewide rules in chapter 197-11 WAC as they apply to the department of ecology.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-030, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-040 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) "Office" means one of the five offices in the department of ecology supervised by an assistant director.

(2) "Region" means any one of the four regional offices of the department.

(3) "Program" means any one of the department's headquarters sections or divisions that administers a program, such as water quality, water resources, shorelands, and hazardous waste.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-040, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-050 Designation of responsible official.** Within the department of ecology, the ultimate responsible official is the director. The responsible official for a specific proposal shall be the person who has been delegated signature authority per WAC 173-06-030, unless more than one person has such authority in a proposal; if so, the responsible official shall be either the next higher supervisor common to all involved persons, or any senior professional staff designated by the deputy director.

[Statutory Authority: Chapter 43.21A RCW. WSR 89-11-021 and 90-07-014 (Order 89-6 and 89-6A), § 173-802-050, filed 5/11/89 and 3/13/90, effective 4/13/90. Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-050, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-060 Additional timing considerations.**

(1) Department staff receiving a permit 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 should ask the applicant to complete an environmental checklist. A

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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. The applicant should also complete an environmental checklist if the staff person is unsure whether the proposal is exempt.

(2) Department staff receiving a completed permit application and environmental checklist should determine whether WDOE or another agency is SEPA lead agency (see WAC 197-11-050 and 197-11-922 through 197-11-940) within five working days. If WDOE is not the lead agency, the staff person shall send the completed environmental checklist, a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(3) When the department has prepared a draft regulation, the draft EIS or determination of nonsignificance (DNS) shall accompany the draft regulation to the ecological commission for its review.

(4) If the only nonexempt action is department approval of detailed project plans and specifications, an applicant may request that the department complete SEPA compliance before the applicant submits the detailed plans and specifications. If the applicant asks for early environmental review, the department shall complete such review at the final engineering report stage, but not earlier.

(5) Whenever possible, the department shall coordinate the comment periods for environmental documents and the planning documents and/or regulations for which they were written, circulating both documents together.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-060, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-070 Threshold determination process—Additional considerations.** When reviewing a completed environmental checklist to make the threshold determination, the responsible official or his designee will:

(1) Independently evaluate the responses of the applicant and note comments, concerns, corrections, or new information in the right margin of the checklist.

(2) Conduct the initial review of the checklist and any supporting documents without requiring additional information from the applicant.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-070, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-080 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 permit 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 his designee shall respond to the request within ten working days of receipt of the letter; 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 after 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 197-11-350(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 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 197-11-350(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 clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarifications 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 permit or other approval for all purposes, including enforcement of the permit or other approval. 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 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-080, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-090 EIS preparation.** (1) Preparation of draft and final EISs and SEISs is the responsibility of the environmental review section. Before the department issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The department normally will prepare its own draft and final EISs. It may require an applicant to provide information that the department does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the department would be unable to prepare a draft and/or final EIS due to its commitments or other constraints or when a local agency transfers lead agency status to the department under WAC 197-11-940, the department may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The department retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the department agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the consultant will work directly for the department.

(c) The outside party will prepare the document under the supervision of the environmental review section and the responsible official.

(d) Normally, the department will print and distribute the documents.

(4) Whenever someone other than the department prepares a draft or final EIS, the department shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the individual preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the EIS.

(d) Allow the person preparing the EIS access to department records relating to the EIS (under chapter 42.17 RCW—Public disclosure and public records law).

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-090, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-100 Public notice requirements.** (1) The department shall give public notice when issuing a DNS under WAC 197-11-350(2), a scoping notice under WAC 173-802-090, 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 department's permit or approval required for the proposal.

(a) When more than one permit or approval required from the department has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or approval must be completed at a specific time in the permit-

ting process and that timing does not coincide with the timing requirements for SEPA public notice, the department must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits/approvals required for a proposal, the department must use one or more public notice methods in subsection (4) of this section.

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

(4) The department shall use one or more of the following 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 permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Mailing to persons or groups who have expressed interest in the proposal, that 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, for site-specific proposals.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-100, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-110 Policies and procedures for conditioning or denying permits or other approvals.** (1)(a) The overriding policy of the department of ecology is to avoid or mitigate adverse environmental impacts which may result from the department's decisions.

(b) The department of ecology shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The department recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The department shall ensure that presently unquantified environmental amenities and values will be given appro-

priate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the responsible official shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The responsible official may:

(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning or denying permits or other approvals.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-110, filed 6/15/84. Formerly chapter 173-801 WAC.]

#### **WAC 173-802-120 Environmentally sensitive areas.**

(1) In determining whether a proposal is exempt from SEPA, the department shall respect "environmentally sensitive area" designations made by local governments under WAC 197-11-908.

(2) The department shall maintain files of the maps and SEPA procedures that cities/counties must send to the department under WAC 197-11-908. The department shall allow the public, groups, and agencies to review these SEPA procedures and maps during normal business hours.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-120, filed 6/15/84. Formerly chapter 173-801 WAC.]

#### **WAC 173-802-130 Threshold levels adopted by cities/counties.**

(1) In determining whether a proposal is exempt from SEPA, the department shall respect the threshold levels adopted by cities/counties under WAC 197-11-800(1).

(2) The department shall maintain files of the SEPA procedures that cities/counties must send to the department under WAC 197-11-800 (1)(c). The department shall allow the public, groups, and agencies access to these SEPA procedures during normal business hours.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-130, filed 6/15/84. Formerly chapter 173-801 WAC.]

#### **WAC 173-802-140 Responsibilities of individuals and work units within the department.**

(1) The environmental review section of the department shall be responsible for the following:

(a) Coordinating agency activities to comply with SEPA, encouraging consistency in SEPA compliance among all regions and programs.

(b) Providing information and guidance on SEPA and the SEPA rules to department staff, agencies, groups, and citizens.

(c) Receiving all SEPA documents sent to the department for review and comment, distributing documents and coordinating review with appropriate regions and programs, preparing the department's response, ensuring a timely response, and requesting extensions to the comment period of an EIS, when needed.

(d) Preparing and publishing the SEPA register weekly as required under WAC 197-11-508.

(e) Maintaining the department's files for EISs, DNSs, scoping notices, and notices of action sent to the department under SEPA and the SEPA rules.

(f) Maintaining files for the city/county SEPA procedures designating environmentally sensitive areas and flexible thresholds and making the information available to department staff and the public.

(g) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with appropriate regions and programs.

(h) Preparing for, coordinating, and presenting annual SEPA workshops and publishing an annual SEPA handbook.

(i) Publishing and distributing the SEPA rules and amending the SEPA rules, as necessary.

(j) Responding to petitions for changes in exemptions from SEPA.

(k) Responding to petitions to resolve lead agency disputes.

(l) Fulfilling the department's other general responsibilities under SEPA and the SEPA rules.

(2) Regional offices and programs of the department shall be responsible for the following:

(a) Determining whether their decision on a permit or other approval, program, policy, plan, or regulation is an "action" under SEPA and, if so, whether it is exempt from SEPA's requirements (the first department official contacted may make these determinations).

(b) Determining whether WDOE or another agency is SEPA lead agency, contacting the environmental review section if there is a question about which agency is the lead agency.

(c) Making the threshold determination (made by the responsible official, see WAC 173-802-050).

(i) Issuing a determination of nonsignificance, if appropriate (issued by responsible official) and ensuring compliance with the public notice requirements of WAC 173-802-100; or

(ii) Contacting the environmental review section if a determination of significance is appropriate.

(d) Reviewing SEPA documents and submitting comments to the environmental review section in a timely fashion, recognizing that SEPA and the SEPA rules impose strict time limits on commenting.

(e) Working with the environmental review section on preparation of EISs.

(f) Ensuring that permit decisions are consistent with the final EIS and DNS.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-140, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-150 Coordination on combined department—Federal action.** When the department is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal.

[Statutory Authority: RCW 43.21C.120 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-150, filed 6/15/84. Formerly chapter 173-801 WAC.]

**WAC 173-802-190 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 and 43.21C.135. WSR 84-13-037 (Order DE 84-21), § 173-802-190, filed 6/15/84. Formerly chapter 173-801 WAC.]