



STATE ENVIRONMENTAL POLICY ACT
OVERVIEW AND UPDATES
IACC 2014
Department of Ecology
Annie Szvetez

Overview of Session

- SEPA Overview and Background
- Agency Roles and Responsibilities
- 2012-2014 Statute & Rule Amendments
- Exemptions and Exceptions
- How to evaluate a proposal and make a threshold determination
- Non-project SEPA Review

What is SEPA?

Law directs, to the fullest extent possible:
All branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

- Identify and develop methods and procedures to insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official

What is SEPA?

- SEPA's environmental policies and goals supplement those in existing authorizations of all branches of government of this state.
- Any governmental action may be conditioned or denied pursuant to SEPA [RCW 43.21C.060].
- Works with other regulations to provide a comprehensive review of a proposal.
 - Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts for all elements of the environment

What is SEPA?

- Applies to all state and local public agencies
- Agency decision-makers must consider likely broad-based environmental consequences of their actions.
- Agency decision-makers may use supplemental authority to *protect* the environment.

Why Do SEPA?

- Public projects benefit from the “hard look” at impacts, alternatives and mitigation options before commitment to specific course of action.
- Provides some transparency for chain of decision-making for public programs and projects
- Promotes early public involvement in planning and project development

When does SEPA Apply?

- Nonproject actions
 - Agency decisions on policies, plans, or regulations
- Project actions
 - Agency decisions to license, fund, or undertake a proposal (public or private)
 - Agency decisions to purchase, sell, or lease resources

SEPA Review – Key Steps

- Determine if SEPA is required
- Identify the SEPA lead agency
- Evaluate the proposal
 - Identify impacts, alternatives, mitigation
- Consider overall probable significant impacts
- Issue a DNS, MDNS or DS/EIS
- Consider feedback
- Complete the review process
- Make an informed decision

Who Does SEPA?

- Who is the lead agency for public projects?
 - -local agency issuing permits?
 - -state agency issuing permits?
 - -County next door?
 - -Agency that initiates proposal? (WAC 197-11-926)
- When possible, SEPA officials should be different than project leads
- When two or more agencies are implementing the proposal or public-private partnerships – agreements are made on case by case basis.

SEPA is a Collaboration

- Environmental review required under SEPA goes beyond any one agency's Expertise
 - Interagency consultation and cooperation
 - Review and commenting on documents
 - Applicant and consultant Involvement
 - Public involvement

When to do SEPA?

- Nonproject actions
 - Agency decisions on policies, plans, or regulations
 - -capitol facilities plan, road/highway plans, creation of a district, local ordinances, land-use plans
- Public Projects actions
 - License, fund, or undertake a proposal (public , private, or combination)
 - Purchase, sell, or lease resources

When to Start SEPA?

- **Public project**
 - Start when Agency proposal initiated
 - Review could consist of supplemental environmental review of programmatic or plan level with project-level analysis
 - Conduct project SEPA review prior to agency decision to move forward with project
 - Define entire proposal

Properly define the proposal

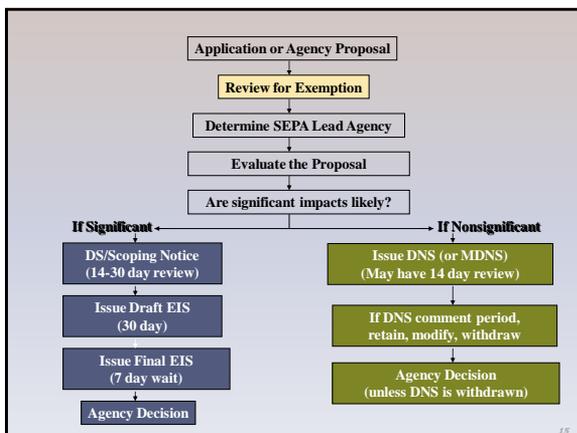
- Identify all aspects and agency approvals
- Evaluate interdependent pieces together
 - Proposal evaluated for SEPA review can be permitted in phases without further SEPA
- Evaluate similar proposals together
- Phased review
 - Example: Comp Plan update, facilities plan, site analysis, project construction/operation/maintenance, retrofit/remodel

13

Has SEPA or NEPA already been done?

- If so:
 - Compare project descriptions
 - Consider any new information
 - Use the SEPA document in decision-making
- If not:
 - Ensure the proposal is properly defined
 - Decide if the proposal is categorically exempt
 - Identify the lead agency

14



15

2012 Statutory Changes to SEPA

1. **Planned actions:** expanded to include essential public facilities and clarification of public involvement
2. **Infill exemption:** Includes mixed use developments
3. **New statutory exemptions:** Development regulations when impacts have been analyzed previously
4. **Checklist Flexibility:** Clarifies ability for lead agencies to answer some or all questions
5. **Agricultural Lands:** New declaration in statute on importance of protecting and preserving agricultural lands

16

Rule Change Highlights

- 2012 “Lightening Round”
 - Increase Flexible Threshold Exemptions
 - Electric Utility distribution exemption increase from 55kv to 115kv
 - Checklist flexibility for non-project actions
- Considerations
 - Public notice opportunities retained
 - Protection of cultural and historic resources rely on SEPA review and mitigation authority

17

Final 2012 Rule Amendment

Flexible Threshold Maximum Levels

Project Types	Fully Planning GMA Counties		All other counties Incorporated and unincorporated areas
	In Urban Growth Area	Other areas	
Single family residential	30 Units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Agricultural	40,000 sq ft	40,000 sq ft	40,000 sq ft
Office, school, commercial + parking	30,000 sq ft 90 spaces	12,000 sq ft 40 spaces	12,000 sq ft 40 spaces
Landfill or excavation	1000 cu yds	1000 cu yds	1000 cu yds

18

2014 Rule Change Highlights

- Public Notice and SEPA Register
- NEPA-SEPA Integration
- General Categorical Exemptions
 - Additional provision for increasing flexible thresholds
 - New WSDOT project exemption
 - Modified definition of *Wetlands*
- Agency-specific categorical exemptions
- Environmental Checklist
- Updated list of Agencies with Expertise

Categorical Exemptions

- Statutory exemptions in SEPA
- SEPA Rule exemptions in WAC 197-11 Part Nine
- City/county options
 - Flexible exemption levels
 - Eliminate exemptions in critical areas
 - In-fill and Planned Action exemptions

Categorical Exemptions

WAC 197-11-800 (1) –(25) Commonly used:

- minor new construction (with flexible thresholds)
- repair, remodel and maintenance activities
- Minor land-use decisions
- utilities
- property sale or acquisition
- procedural actions

Categorical Exemptions

- **CAUTION:** Watch for “exceptions”
 - Lands covered by water
 - Rezones
 - Permits to discharge to air or water
- Check restrictions in WAC 197-11-305
 - Critical areas
 - Segment of a proposal -If part of project or one of the agency approvals is not exempt – then entire project is not exempt

Definition of Wetlands

WAC 197-11-756 – Definitions

- Revise SEPA definition of *Lands Covered by Water* to be consistent with GMA definition of *Wetlands*
 - Artificially created waterways are not included.
 - Clarification that buffers and adjacent lands above the ordinary high water mark are not “lands covered by water”.

Transportation Exemptions

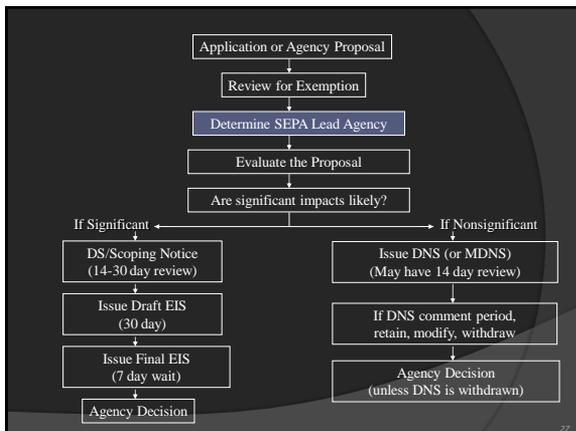
- “Other” minor new construction – transportation – minor clarifications
- New WSDOT project exemptions
 - repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes),

Misc. Exemptions

- Minor new construction and *mixed use* projects
- Further clarification of *fill and excavation* exemption – adding “necessary for” the construction of an otherwise exemption structure
 - “and any excavation, fill or grading necessary for an exempt project in . . .”
- Maintenance dredging is exempt up to 50 cubic yards of material

Misc. Exemptions

- Addition of above-ground storage tanks
- Accessory solar energy equipment to existing structure
- Addition of *Special Purpose Districts* – along with exemption for Local Improvement Districts
- Clarification of “authorized public use” in exemption for sale of public lands

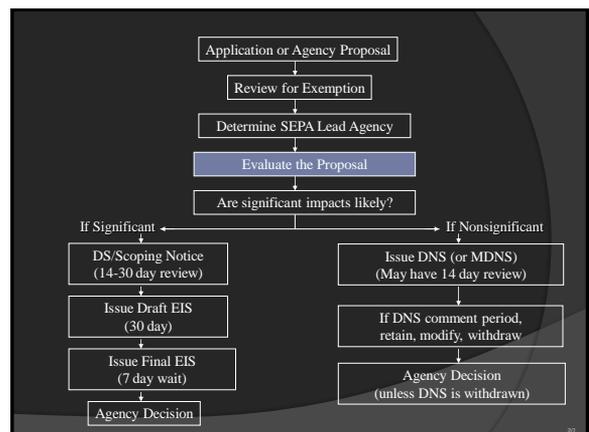


Which agency is lead?

- Public proposal
 - agency proposing the action
- Private projects
 - usually city/county
- Special designations
 - WAC 197-11-938

Lead Agency Duties

- Conduct environmental review
 - Identify and evaluate likely impacts
 - Consult with other agencies with jurisdiction and expertise
 - Identify mitigation measures
 - Issue a threshold determination (documentation)
 - Comply with procedural requirements
- “Show your work” to other agencies and the public
- Consider comments and revise as necessary



Evaluating the proposal

- Review the environmental checklist
 - Or proceed with EIS
- Identify other needed information
- Determine consistency with plans and programs
- Identify existing conditions
- Identify impacts to the environment
- Identify possible mitigation measures
- Evaluate significance of total proposal
- Make a threshold determination

31

Elements of the Environment

Natural

- Earth
- Air
 - Odor
 - climate
- Water
- Plants/Animals
- Energy/Natural Resources
 - Scenic resources

Built

- Environmental Health
 - Noise
- Land/Shoreline Use
 - Light and glare
 - Aesthetics
 - Historic and cultural
- Transportation
- Public Services/Utilities

32

Environmental Checklist

- Environmental checklist includes:
 - Existing conditions
 - Changes caused by the proposal
 - Applicant's proposed mitigation
- Checklist does not include:
 - Analysis of impacts
 - Requirements of other regulations

33

Revised Checklist Questions

- New checklist template
 - Updated text in Part B
 - Revised questions for Cultural Resources, Environmental Hazards and Land Use sections
 - Added questions about impacts to agricultural lands

34

Checklist Guidance

- **Updated guidance for Checklist**
 - Help with answering questions
 - Help with reviewing applicant's answers
 - **On-line "help button" format - embedded in Checklist template**
 - **Filled with resource links**
 - Send edits/comments on guidance to sepahelp@ecy.wa.gov
- <http://www.ecy.wa.gov/programs/sea/sepa/docs/checklistGuidanceLinks.docx>

35

Evaluating the Checklist

- Review for **complete** and **accurate** information
 - Lead agency accountable for information used to make threshold determination
 - Request additional information if necessary
- Document the comments and make changes if necessary
- Distribute draft checklist for interagency Consultation

Additional Information

- Checklist is first step – but evaluation is not limited to this
- “complete application” could require more information from applicant
 - Additional studies and reports
 - Previously prepared SEPA or NEPA documents
 - Local information
 - Critical areas ordinances
 - GIS maps

37

Identify Impacts

- Which elements will be affected?
- When will the change occur?
- How long will it last?
- Is an adverse impact likely?
- Consider:
 - Short and long term
 - Direct and indirect
 - Cumulative

38

What is Mitigation?

- Avoiding
- Minimizing
- Rectifying
- Reducing over time
- Compensating
- Monitoring the impact and taking corrective measures

39

Determine Significance

- SEPA Rules WAC 197-11-330
- Identify and document probable significant adverse environmental impacts
- Significance involves:
 - Context – physical setting
 - Intensity – magnitude and duration
 - Severity
 - Likelihood of occurrence

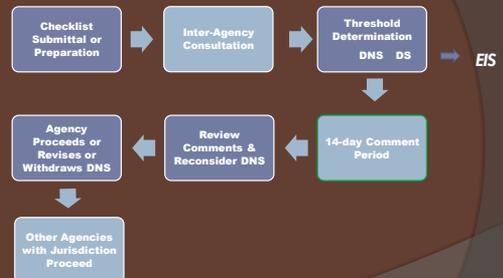
40

Threshold Determination

- Is a significant adverse environmental impact likely?
- Have adverse impacts been mitigated?
- Significant ⇒ DS/EIS
- Nonsignificant ⇒ DNS
- Significant, but mitigated ⇒ MDNS

41

DNS Process



42

Contents of a DNS

- ⦿ Not intended to be just a formality – but the justification of why EIS is not needed
- ⦿ If legally challenged, an agency's procedural compliance with SEPA may stand or fall on the contents of its environmental documents (often the adequacy of the DNS)
- ⦿ Clarity on type of document is important
- ⦿ Helpful to list all the agency approvals that must consider this information

Document Distribution

For issuing SEPA Documents

- Include detailed project description
- Attach related documents – **checklist**, maps, site plan, all referenced material
- Involve other agencies and the public
 - Required distribution
 - SEPA Unit, Tribes, agencies with jurisdiction

Consider Comments

- ⦿ Retain DNS
 - No additional documentation required
 - If "final DNS" is issued – please identify previous
- ⦿ Modify/Revise DNS
 - Important to do this prior to any agency's action
 - No comment period required unless it's an MDNS with different mitigation
 - Include new checklist if modified or addendum to checklist
- ⦿ Withdraw DNS
 - Starts the process again

Types of Nonproject Actions

- Legislation, ordinances, rules & regulations that contain standards controlling use of environment
- Land use plans and zoning laws
- Policy, plan or program that governs development of series of connected actions (programmatic)
- Capital budgets and plans
- Road, street and highway plans

Nonproject Actions:

- ⦿ Contain standards controlling use or modification of the environment
- ⦿ Provide the basis for future projects
- ⦿ Foreclose future options
- ⦿ Often constitute a sequence of decisions that build-upon each other
- ⦿ Authorize future projects

Importance of Non-Project SEPA

- ⦿ Provides a "big picture" analysis
- ⦿ Useful opportunity to address cumulative impacts
- ⦿ Documents consideration of broad range of impacts and reasonable alternatives
- ⦿ Streamlines SEPA review for subsequent project decisions

Key Tasks for Nonproject Review

- Identify the problem and need for action
- Identify objectives
- Describe key issues
- Identify possible alternatives that achieve objectives
- Evaluate the impacts of each alternative
- Consider ways to reduce impacts

Process Steps for Non-Project Review

- Start the SEPA process when given mandate or decision to pursue plan, policy, rule, general permit, etc.
- Update analysis throughout development of the proposal
- Issue DNS or DEIS with the draft proposal
- Consider comments and finalize
- Use information in decision-making

Relation to Project-Level Review

- Project-level SEPA review should:
 - Focus on issues not addressed during planning
 - Build on environmental analysis from development regulations, general permits, and other laws and regulations
 - Focus on the gaps
- Nonproject SEPA documents can be adopted and supplemented

Questions

Annie Szvetecz

Department of Ecology -HQ
aszv461@ecy.wa.gov
(360) 407-6925

SEPA Hotline

360 407-6922
sepahelp@ecy.wa.gov