

# **SWCAA 802**

## **SEPA Procedures**



Effective Date: November 8, 2013

Filed with Code Reviser (CR-101) Preliminary Notice Published	WSR 11-14-017 WSR 11-14	June 23, 2011 July 20, 2011
Filed with Code Reviser (CR-102) Proposed Regulation Published	WSR 13-13-008 WSR 13-13 / 13-14	June 6, 2013 July 17, 2013
Filed with Code Reviser (CR-103) Final Regulation Published	WSR 13-21-029 WSR 13-21	October 8, 2013 November 6, 2013
Effective Date of Final Rules	November 8, 2013	

NOTE: SEPA procedures conducted by the Southwest Clean Air Agency prior to adoption of SWCAA 802 were performed in accordance with Board Resolution 1976-3 (August 17, 1976), which adopted by reference selected sections of WAC 173-805.

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## SEPA Procedures

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## SWCAA 802 - SEPA Procedures

### SWCAA 802-010 Purpose and Authority

This regulation contains the Agency's SEPA policies and procedures. This regulation is adopted under the authority of the State Environmental Policy Act (SEPA), RCW 43.21C.120. The statewide SEPA rules found in WAC 197-11 must be used in conjunction with this regulation.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-020 Adoption by Reference

The Agency adopts the following sections of WAC 197-11 by reference:

197-11-040	Definitions
197-11-050	Lead Agency
197-11-055	Timing of the SEPA process
197-11-060	Content of environmental review
197-11-070	Limitations on actions during SEPA process
197-11-080	Incomplete or unavailable information
197-11-090	Supporting documents
197-11-100	Information required of applicants
197-11-300	Purpose of this part
197-11-305	Categorical exemptions
197-11-310	Threshold determination required
197-11-315	Environmental checklist
197-11-330	Threshold determination process
197-11-335	Additional information
197-11-340	Determination of nonsignificance (DNS)
197-11-350	Mitigated DNS
197-11-360	Determination of significance (DS)/initiation of scoping
197-11-390	Effect of threshold determination
197-11-400	Purpose of EIS
197-11-402	General requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded scoping
197-11-420	EIS preparation
197-11-425	Style and size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
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
197-11-460	Issuance of FEIS
197-11-500	Purpose of this part

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197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-535	Public hearings and meetings
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
197-11-650	Purpose of this part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals
197-11-700	Definition
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built environment
197-11-720	Categorical exemption
197-11-722	Consolidated appeal
197-11-724	Consulted agency
197-11-726	Cost-benefit analysis
197-11-728	County/city
197-11-730	Decisionmaker
197-11-732	Department
197-11-734	Determination of nonsignificance (DNS)
197-11-736	Determination of significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental checklist
197-11-744	Environmental document
197-11-746	Environmental review
197-11-750	Expanded scoping
197-11-752	Impacts
197-11-754	Incorporation by reference
197-11-756	Lands covered by water
197-11-758	Lead agency
197-11-760	License

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197-11-942	Agreements on lead agency status
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197-11-960	Environmental checklist
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197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)

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197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-030 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) "Agency" means the Southwest Clean Air Agency.
- (2) "Director" means the executive director of the Southwest Clean Air Agency.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-040 Designation of Responsible Official

For proposals for which the Agency is the lead agency, the responsible official shall be the Director or an Agency employee designated by the Director. The responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules adopted by reference in SWCAA 802-020. The Agency shall retain all documents required by the SEPA rules (WAC 197-11) and make them available in accordance with Chapter 42.17 RCW.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-050 Lead Agency Determination and Responsibility

- (1) When the Agency receives an application for, or initiates, a proposal that involves a nonexempt action, the Agency shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the Agency is aware that another agency is in the process of determining the lead agency. When the Agency is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- (2) When the Agency is not the lead agency for a proposal, the Agency shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The Agency shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.
- (3) If the Agency receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the Agency must petition the Department of Ecology for a lead agency determination

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under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the Agency may be initiated by the Director.

- (4) The Agency may make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944. The responsible official and any agency that will incur responsibilities as the result of such agreement must both approve the agreement.
- (5) When the Agency makes a lead agency determination for a private project, the Agency shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-060 Additional Timing Considerations

Agency 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 checklist is not needed if the agency 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.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-070 Use of Exemptions

- (1) When the Agency receives an application for a permit or, in the case of governmental proposals, the Agency initiates the proposal, the Agency shall determine whether the permit and/or the proposal is exempt. The Agency's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of this regulation apply to the proposal. The Agency shall not require completion of an environmental checklist for an exempt permit or proposal.
- (2) In determining whether or not a proposal is exempt, the Agency shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the Agency shall determine the lead agency, even if the license application that triggers the Agency's consideration is exempt.
- (3) If a proposal includes both exempt and nonexempt actions, the Agency may authorize exempt actions prior to compliance with the procedural requirements of this regulation, except that:
  - (a) The Agency shall not give authorization for:
    - (i) Any nonexempt action,
    - (ii) Any action that would have an adverse environmental impact, or
    - (iii) Any action that would limit the choice of alternatives;
  - (b) The Agency may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and



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- (c) The Agency may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-080 Environmental Checklist

A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

- (1) The environmental checklist shall be in the form provided in WAC 197-11-960. As used throughout this regulation, environmental checklist means the environmental checklist required by this section.
- (2) The Agency shall use the environmental checklist to determine the lead agency, and if SWCAA is to be the lead agency, for determining the responsible official and for making the threshold determination.
- (3) For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
  - (a) The Agency has technical information on a question or questions that is unavailable to the private applicant; or
  - (b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-090 Mitigated DNS

- (1) As provided in this section, and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- (2) An applicant may request early notice of 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 Agency is lead agency; and
  - (c) Precede the Agency's actual threshold determination for the proposal.
- (3) The responsible official or his designee shall respond to the request within 30 working days of receipt. The response shall:
  - (a) Be written;
  - (b) State whether the Agency currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the Agency to consider a DS; and

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- (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- (4) The Agency's written response under subsection (3) 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 agency to consider the clarifications or changes in its threshold determination.
- (5) The agency 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.
- (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 agency may require the applicant to submit a new checklist.
- (7) If an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the Agency shall base its threshold determination on the changed or clarified proposal and shall make the determination within 30 days of receiving the changed or clarified proposal.
  - (a) If the Agency indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the Agency shall issue and circulate a DNS or mitigated DNS under WAC 197-11-340(2).
  - (b) If the Agency indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the Agency shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.
- (8) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to Agency staff reports, studies, or other documents. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the Agency.
- (9) If the Agency's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the Agency should evaluate the threshold determination to ensure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-100 EIS Preparation

- (1) Preparation of draft and final EISs and SEISs is the responsibility of the responsible official. Before the Agency issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.
- (2) The Agency will normally prepare its own draft and final EISs. It may require an applicant to provide information that the Agency does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

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- (3) If the Agency is unable to prepare a draft and/or final EIS due to its commitments or other constraints, the Agency may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:
  - (a) The Agency retains a mutually agreed upon and independent outside party to prepare the document.
  - (b) The applicant and the Agency agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the outside party will work directly for the Agency.
  - (c) The outside party prepares the document under the supervision of the responsible official.
- (4) Whenever someone other than the Agency prepares a draft or final EIS, the agency 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 outside party 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 outside party preparing the EIS.
  - (d) Allow the outside party preparing the EIS access to agency records relating to the EIS (under chapter 42.17 RCW -- Public disclosure and public records law).

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### **SWCAA 802-110 Substantive Authority**

The policies and goals set forth in this section supplement those in the existing authority of the Agency.

- (1) The Agency designates and adopts by reference the following policies as the basis for the Agency's exercise of substantive authority under SEPA, pursuant to this section:
  - (a) The Agency 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) Ensure 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.

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- (b) The Agency 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.
- (2) The Agency may attach conditions to a permit or approval for a proposal if:
  - (a) The mitigation measures included in such conditions are reasonable and capable of being accomplished;
  - (b) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance;
  - (c) The Agency has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts;
  - (d) Such conditions are in writing; and
  - (e) Such conditions are based on one or more policies in subsection (1) of this section and cited in the license or other decision document.
- (3) The agency may deny a permit or approval for a proposal on the basis of SEPA if:
  - (a) Approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance;
  - (b) There are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
  - (c) The denial is based on one or more policies identified in subsection (1) of this section and identified in writing in the decision document.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-120 Public Notice

- (1) Whenever the Agency issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Agency shall give public notice as follows:
  - (a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
  - (b) If no public notice is required for the permit or approval, the city/county shall give notice of the DNS or DS by:
    - (i) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered; and
    - (ii) Posting notice on the Agency website.
- (2) Whenever the Agency issues a DS under WAC 197-11-360(3), the Agency shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- (3) Whenever the Agency issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following methods:
  - (a) Posting the property, for site-specific proposals;
  - (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
  - (c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

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- (d) Notifying the news media;
  - (e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;
  - (f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists; and/or
  - (g) Posting notice on the Agency website.
- (4) Whenever possible, the Agency shall integrate the public notice required under this section with existing notice procedures for the Agency's nonexempt permit(s) or approval(s) required for the proposal.
- (5) The Agency may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### SWCAA 802-130 Fees

The Agency may require the following fees for its activities in accordance with the provisions of this regulation.

- (1) **Threshold Determination.** The Agency may charge and collect the fee specified below from any applicant to cover the costs incurred by the Agency in preparing an environmental checklist or other information needed for the Agency to make a threshold determination. In addition, The Agency may contract directly with a consultant for preparation of an environmental checklist or other information needed for the Agency to make a threshold determination, and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs and expenses. If the staff time required to make a threshold determination exceeds the number of work hours associated with the applicable fee, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

#### SEPA Threshold Determination Fee:

Minor project	\$1,000.00	(14 associated work hours)
Major project	\$2,500.00	(35 associated work hours)

- (2) **Environmental impact statement.**
- (a) When SWCAA is the lead agency for a proposal requiring an EIS, and the responsible official determines that the EIS shall be prepared by employees of the Agency, the staff time required to prepare the EIS will be invoiced to the applicant at the rate of \$70.00 per hour. The Agency may also contract directly with a consultant for preparation of the EIS, and may bill such costs and expenses directly to the applicant. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.
- (b) The responsible official may determine that the Agency will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the Agency and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs.

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- (c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.
- (3) Public notice. The Agency may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this regulation relating to the applicant's proposal.
- (4) The Agency shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.
- (5) The Agency may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by Chapter 42.17 RCW.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

### **SWCAA 802-140 Severability**

If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of this regulation, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]