

EVOLVING STATE ENVIRONMENTAL POLICY ACT (SEPA)

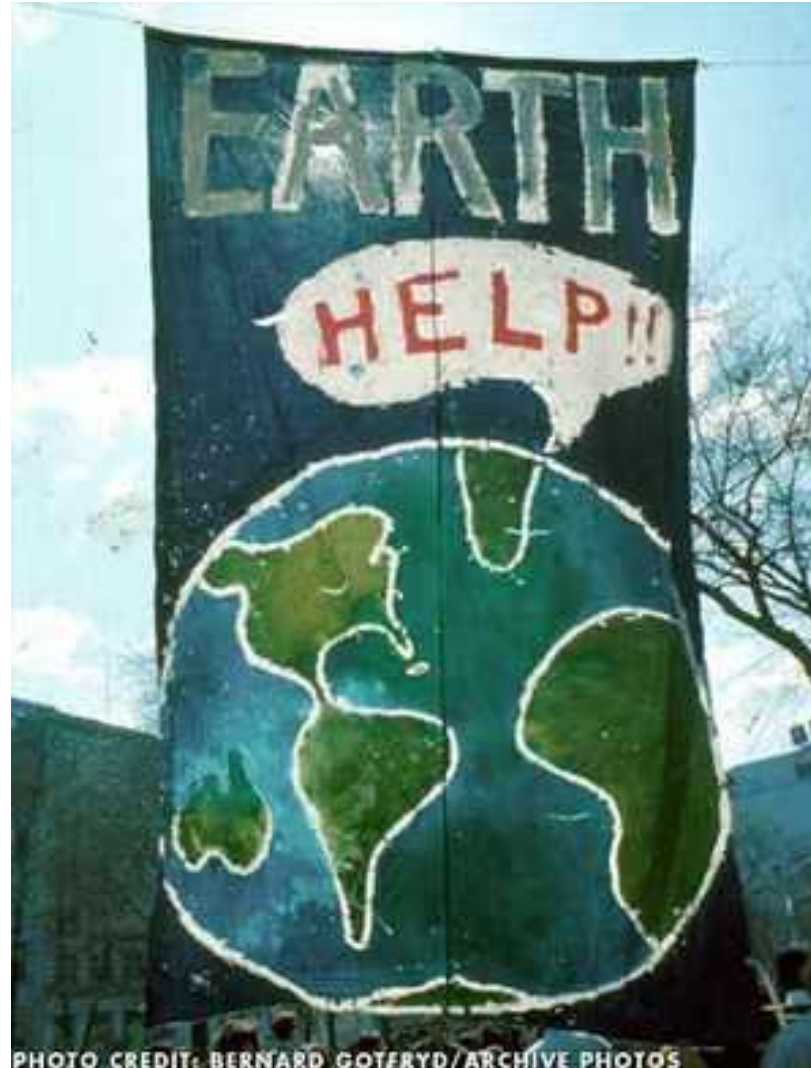
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The Origin of the SEPA Environmental Review Process

- Events of the 60's
 - Cuyahoga River catches fire - 1969
 - Torrey Canyon (supertanker) Oil Spill - 1967
 - Concern with Federal Government actions
 - Proposal for dam that would flood Grand Canyon - 1965



Organization of 1st Earth Day - 1970



State Environmental Review Processes

- Washington's process is known as the State Environmental Policy Act (SEPA)
- Twenty-three (23) states use environmental review processes similar to SEPA
- ***SEPA is a public process – not a permit application***

State Environmental Policy Act (SEPA)

Adopted in 1971

Any proposal that requires a state or local agency decision to license, fund, or undertake a project

Categorical exemption

Environmental Checklist

(Mitigated) Determination of Nonsignificance

Environmental Impact Statement

Draft EIS

Final EIS

Purpose of the SEPA Process

- Consider environmental information as part of agency decision-making
- Identify and evaluate impacts, alternatives, and mitigation measures
- Encourage public involvement
- Basis for state and local agencies' "substantive authority" to condition or deny a proposal during permitting

SEPA: RCW 43.21C

SEPA Guidelines: WAC 197-11

Big Changes in Last 40 Years:

- Legislative Changes
 - ▣ Growth Management Act/SEPA Integration
 - ▣ Model Toxics Control Act/SEPA Integration
- More Stringent Environmental Regulations
- Question of Duplication

Legislative Changes

- The Washington State Legislature adopted new laws that require local governments and state agencies to directly address many of the environmental issues that they had previously relied on SEPA to resolve
- **Growth Management Act (GMA)** - One of the biggest changes in land use arena when adopted in 1990 and later integrated with the SEPA process
- **Model Toxics Control Act (MTCA)/SEPA Integration**

More Stringent Environmental Regulations

- SEPA used to be one of the primary tools for environmental protection
- Over the last 40 years, other local, state and federal environmental laws and regulations have become more complex and stringent

Question of Duplication

- Requiring SEPA review of project impacts that are now addressed by new and evolved federal, state, and local regulatory schemes creates a potentially duplicative regulatory framework
- Any validity?
- ***SEPA is a public process, not a permit application***
- Revisit the purpose of the SEPA process.....

Purpose of the SEPA Process:

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Is it Working?

- Fewer EISs required over time
- Many projects now incorporate mitigation into the project design to stay below significant adverse impact levels
- Mitigated Determination of Non-Significance

SEPA Register Docs in 2010 = 6,447

Partial Breakdown of Documents on Ecology SEPA Register:

Determination of Non-Significance (DNS)

- DNS 2,768
- Mitigated DNS 880
- Optional DNS 542

Determination of Significance (DS)/EIS

- Scoping 42
- EIS - Draft 43 < 1% of total SEPA documents
- EIS - Final 35

My Top Ten List.....



Number 10

Electronic and Social Media

- ❑ Allows for rapid and easy organization for SEPA comments from the public
- ❑ Public records request (5-day turnaround) potentially jeopardize tenant projects because bombardment of requests
- ❑ Easier for public to learn about projects outside of immediate area and get involved
- ❑ Project websites/access are expected by the public

Number 9

Procedural Errors Are More Dangerous than Lack of Analysis

- ❑ Incorrect start/end of comment periods
- ❑ Typos on SEPA documents including threshold determinations
- ❑ Insufficient public notice and outdated jurisdictional agency lists
- ❑ Don't Rush! Get someone to double-check your work

Number 8

Due Diligence on Leases

- Ports can choose to take pro-active cautionary steps when dealing with developers looking for early due diligence leases where SEPA would not otherwise be triggered
- A little advance planning by port staff along with some best practice preventive measures may help avoid appeals

Number 7

2012-2013 Statutory Changes

- **Planned actions:** expanded to include *essential public facilities and clarification of public involvement*
- **Infill exemption:** *Includes mixed use developments*
- **Non-project actions:** *Development regulations when impacts have been analyzed previously*
- **Flexible Thresholds:** *Lead agency chooses to adopt and provide public notice*
- **Wireless facilities...** and other exemption changes

Included in the 2012-2013 Changes:

New SEPA checklist as of May, 2014

- Updated text in Part B
- Revised questions for Cultural Resources, Environmental Hazards, Land Use and Traffic sections
- Updated guidance for Checklist
- Help with answering questions

Number 6

Emphasis on Shoreline Permit

- Regulatory agencies depend more on the SEPA checklist to respond to all the questions on the shoreline permit application to expedite the permit process
- Important to know about in-water permitting requirements so you can include that information in the SEPA checklist and expedite review from agencies

Number 5

SEPA Process Integrated with Design

- Proponents tend to design their project prior to SEPA process resulting in lack of coordination for achieving design with lower environmental impact
- SEPA process should start as early in the process as possible with project designers/engineers
- When a reasonable project description is available
- Rule of Thumb – 30% Design

Number 4

2015 Statutory Amendment – Structurally Deficient Bridges

- HB 1851
- *(1) The department must amend the categorical exemption available to Washington department of transportation projects under WAC 197-11-800(26)so that the same categorical exemption applies to structurally deficient city, town, or county bridge repair or replacement projects*

Number 3

Greenhouse Gas Emissions (GHG) and Sea Level Rise

- New Checklist Elements - Air Quality Worksheet



Number 2

Update SEPA Policies and Procedures

- Compile robust SEPA policies that instill confidence from Ecology when vying for lead agency status
- Integrate GHG and climate change protocol
- Adopt flexible thresholds for categorical exemptions
- Update appeal and notification procedures
- Different tools for small, medium and large ports

And Number 1.....

WAC 197-11-938

Lead agencies for specific proposals

- Lead agencies = state and local agencies, including cities, counties, and municipal or public corporations (public ports)
- Public proposal – agency proposing the action
- Private projects – usually city/county
- ***Special designations – WAC 197-11-938***

Why Number 1?

- Relevancy - SEPA can be a time eater. It's essential to meet or exceed timelines and schedules for potential tenants
- A motivated port staff can complete a SEPA process much more quickly than Ecology
- Highly competitive energy market/formidable opposition
- **More on SEPA and Energy from Tim McMahan.....**



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“Always do right. This will gratify some people and astonish the rest.” – Mark Twain