



CQ128

August 29, 2002

Rhey Solomon  
Council on Environmental Quality  
NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

Subject: The Council on Environmental Quality: National Environmental Policy Act Task Force

Dear Mr. Solomon:

Thank you for the opportunity to offer comments regarding the National Environmental Policy Act (NEPA) Task Force activities as identified in the Federal Register, Vol. 67, No. 131 dated July 9, 2002. Specifically, the NEPA Task Force, serving on behalf of the Council on Environmental Quality (CEQ), is seeking ways to improve NEPA analysis and documentation that will foster improved coordination among all levels of government and the public. At this time, the task force is requesting comments on certain implementation aspects of NEPA and is soliciting examples of effective NEPA implementation to serve as case studies of best practices.

The Washington State Department of Natural Resources (DNR) offers comments concerning intergovernmental cooperation between state and federal agencies based on past and future collaborations on combined NEPA and State Environmental Policy Act (SEPA) documents. Additionally, DNR offers a description of the structure and focus of the Adaptive Management Program functioning under the Washington State Forest Practices Rules.

The examples referred to in the following questions have been consolidated from multiple experiences into four primary examples:

Examples 1 and 2

The first two examples include a comparison of Environmental Impact Statements (EISs) prepared under NEPA by the Federal Energy Regulation Commission (FERC). The first EIS was prepared for a hydroelectric dam on Warm Creek and Clearwater Creek<sup>1</sup> that would be constructed on DNR state trust lands. The proposed site includes old growth

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<sup>1</sup> FERC project numbers: Warm Creek #10865, and Clearwater Creek # 11495.

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forest that is covered by a Habitat Conservation Plan (HCP) and is designated as a spotted owl nest patch. This HCP is a binding legal agreement between the state and the USFWS. Additionally, the site included cultural resources issues and steep unstable slopes that are protected under both the HCP and state Forest Practices Rules. The second example is an EIS that was developed for a pipeline installation project called the Grays Harbor Lateral Project<sup>2</sup>, which was also proposed for construction on DNR state trust lands. This area includes forestlands that were subject to state Forest Practices Rules.

Example 3:

The third example includes a joint NEPA/SEPA EIS that was prepared for a multi-species HCP covering DNR's state trust lands. For purposes of writing this document, DNR shared co-lead agency status with the USFWS.

Example 4:

From a regulatory perspective, DNR has adopted Forest Practices Rules that were written through extensive stakeholder negotiations. In April 2001, DNR published a final EIS under SEPA (a CD of this document is attached) covering potential impacts of the now permanent rules, which included analysis of an adaptive management program. DNR is now in the process of obtaining federal assurances for these rules from the United States Environmental Protection Agency (EPA) under the Clean Water Act (CWA) and from the United States Fish and Wildlife Service and the National Marine Fisheries Services (NMFS)<sup>3</sup> under the Endangered Species Act (ESA). Gaining federal assurances requires that an additional EIS be prepared under both NEPA and SEPA. DNR may elect to fulfill requirements under both NEPA and SEPA by preparing a joint EIS. DNR would appreciate the opportunity to provide additional comments to the NEPA taskforce as we move through this process.

**A. Technology, Information Management, and Information Security:**

No comments at this time.

**B. Federal and Inter-governmental Collaboration:**

- 1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide examples and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions.**

The Grays Harbor Lateral Project (example #2) provides a positive example of intergovernmental collaboration. During the public comment period for this proposal,

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<sup>2</sup> FERC project number: Grays Harbor Lateral # CP01-361-000.

<sup>3</sup> The USFWS and the NMFS are referred to jointly as the Services.

DNR submitted comments to FERC, stating that the proposed site for this project was subject to state Forest Practices Rules. FERC later contacted DNR and incorporated the state requirements into its preferred alternative in the final EIS. Following adoption of the preferred alternative, FERC found that the timelines associated with the rules were not sufficient for their purposes and they later received court permission to extend these deadlines. However, from a project management perspective, FERC's willingness to formally acknowledge DNR's comments and work through existing state requirements allowed their project to proceed quickly with relatively little impact to both agencies<sup>4</sup>. The result was full DNR support of the final project without additional delays. The primary review process for this project proposal lasted less than two years.

When DNR worked with the United States Fish and Wildlife Service (USFWS) to develop a joint NEPA/SEPA EIS for the statelands HCP (example #3), it was very helpful to have a single high-level person at each agency involved. For example, during the writing of the EIS, the Commissioner of Public Lands<sup>5</sup> and the HCP office lead and assistant regional director of the USFWS were continually and personally involved in the NEPA/SEPA process. This allowed a primary contact from each agency for resolving outstanding issues that could not be resolved at lower levels.

**2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?**

In contrast to FERC's Grays Harbor Lateral Project mentioned above, the Warm Creek/Clearwater Creek hydroelectric project (example #1) provides an example of barriers to entering into a collaborative agreement. During this project, DNR commented on a draft EIS prepared by FERC, stating that the project was in violation of an HCP that was in place for the proposed construction site. Although a final EIS was prepared that acknowledged this conflict, the recommendation was to proceed with the preferred alternative and begin construction as proposed. The result of FERC not working with the state to identify possible alternatives to the proposal included significant delays and expense of considerable time and resources by Tribal, State and Local governments. Additionally, because the FERC requirements and the previously existing requirements entered into with the USFWS are not compatible, DNR is caught in the middle of conflicting requirements from two federal agencies. This project has taken nearly a decade to resolve, and may be subject to future litigation due to these issues not being adequately addressed to date.

**3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?**

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<sup>4</sup> It took less than two years from the completion of the final EIS until the start of the project. This is compared to the Warm Creek and Clearwater Creek hydroelectric project, which has been in a state of flux for over 10 years because FERC has not formally recognized DNR's previous existing liabilities.

<sup>5</sup> The Commissioner of Public Lands is the administrator of the DNR in Washington State.

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At the time that the EIS for the DNR HCP was written (example #3), there was a general lack of understanding by the Services as to how joint-lead efforts could be fashioned. This resulted in much wasted time while the logistics were sorted out. Although the EIS for the HCP was written about five years ago, this seems to still be the case with the EIS that will be written in the near future under the Forest Practices Rules (example #4).

### **C. Programmatic Analysis and Tiering:**

- 1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analysis, and the efficiencies realized by the analysis or in subsequent tiers.**

The concept of tiering likely provides added support for NEPA projects by strengthening projects as they receive multiple reviews. However, it also creates complications because multiple reviews involve different players than had been involved initially and therefore have the potential to create additional requirements on applicants. This is similar to the problems of having a large percentage of staff turnover and then having new staff not be aware of actions that were discussed and taken along the way to development. This could cause unnecessary delays once things have already been negotiated, particularly for projects where the lead federal agency has already been involved throughout the conceptual stages of the project and provided comment along the way. Tiering works when each new level of review addresses new issues only, or either site specific or more specific aspects not reviewed at higher "tiers" rather than revisiting each issue in its entirety at each successive tier.

- 2. Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001.**

For the case of the DNR Forest Practices Rules (example #4), the USFWS and NMFS were involved in co-authoring the Forests and Fish Report (described below under D. Adaptive Management), which laid out the foundation for future rule development<sup>6</sup>. Although the USFWS and NMFS were not involved in the actual writing of the Forest

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<sup>6</sup> Authors of the Forests and Fish Report included representatives from tribal governments, timber industry, counties, state government, and federal agencies.

Practices Rules, they were kept informed of developments along the way, including the production of an EIS developed under SEPA. Given that the USFWS and NMFS have been familiar with the Forest Practices Rules from early on in the development stages, it seems that as the project moves through the NEPA process that reviews could be somewhat streamlined.

#### **D. Adaptive Management/Monitoring and Evaluation Plans:**

In addition to answering the questions provided under this section, Washington State DNR offers a summary of the Adaptive Management Program to serve as a best examples case study<sup>7</sup>. Washington's Adaptive Management Program is a scientifically based management approach that includes research, monitoring, stakeholder participation, dispute resolution, and rule development<sup>8</sup>.

#### **Case Study: Washington State Adaptive Management Program**

The Washington State Department of Natural Resources (DNR) is embarking on a landmark adaptive management program that is a component of Washington State's Forest Practices Rules. These rules, also known as the Forests and Fish Rules, were developed consistent with the Forests and Fish Report to further the salmon recovery efforts and clean water act requirements in the state.

The Forests and Fish Report (FFR) was written in April of 1999 by representatives from the very interest groups that it sought to regulate.<sup>9</sup> The authors' purpose was to work together to develop biologically sound and economically practical solutions that would improve and protect riparian habitat on non-federal forestlands in the State of Washington while meeting four goals:

- 1/ to provide compliance with the Endangered Species Act for aquatic and riparian dependent species on non-federal forestlands;
- 2/ to restore and maintain riparian habitat on non-federal forest lands to support a harvestable supply of fish;
- 3/ to meet the requirements of the Clean Water Act for water quality on non-federal forestlands; and

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<sup>7</sup> The Washington State Forest Practices Rules include a strong adaptive management component that has been formally adopted into law and is currently in the early implementation stage. The Washington Forest Practices Rules are available at the DNR website located at: [www.dnr.wa.gov](http://www.dnr.wa.gov)

<sup>8</sup> See also Appendix L of the Forests and Fish Report, April 29, 1999, titled: Adaptive Management. The Forests and Fish Report is also available online at [www.dnr.wa.gov](http://www.dnr.wa.gov) through the link to the Forest Practices Rules.

<sup>9</sup> Authors of the Report includes a team of five caucuses, including: tribal governments, the timber industry (represented by Washington Forest Protection Agency and the Washington Farm Forestry Association), Counties (represented by the Washington State Association of Counties), state government (Departments of Natural Resources, Fish and Wildlife, and Ecology), and federal agencies (including the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS) and the EPA.).

4/ to keep the timber industry economically viable in the State of Washington.

Since its development, the FFR has become an integral part of Washington's statewide strategy to address ESA requirements and recover salmon. In June of 1999, the Washington State Legislature passed the Salmon Recovery Act. This legislation strongly encouraged the Forest Practices Board to adopt new Forest Practices Rules consistent with the recommendations of the Forests and Fish Report. The legislature found that implementing the Forests and Fish Report would lead to, among other things, the implementation of a scientifically based adaptive management and monitoring process.

The new Forest Practices Rules consistent with the FFR became effective July 1, 2001. The Adaptive Management Program, a key feature of the Forests and Fish Rules, is a science-based process for amending Forest Practices Rules to incorporate new information as it becomes available. The Rules<sup>10</sup> require that only science-based changes be made to the Forests and Fish Rules, and that there be a peer-reviewed process of issue identification and scientific enquiry before any rule change can be proposed.

To assist with the goals of the Adaptive Management Program, the Forest Practices Board<sup>11</sup> appoints members to a committee (known as CMER – Cooperative Monitoring, Evaluation and Research Committee) to oversee the process. CMER is accountable for conducting research, and validation and effectiveness monitoring, and is to facilitate research objectives. Members of CMER are required to have scientific expertise and must represent one of the major stakeholder groups, including timber landowners, environmental interests, state agencies, county governments, federal agencies or tribal governments.

The adaptive management process participants include the Timber Fish and Wildlife Committee (TFW), an adaptive management program administrator, and a Cooperative Monitoring Evaluation and Research (CMER) committee along with the Forest Practices Board (Board). Additionally, independent scientific peer review and dispute resolution mechanisms are used.

In general, the CMER committee focuses on research and monitoring and serves to advance the science needed to support adaptive management. Specifically, it imposes accountability and formality of process while ensuring that the science will address the Forest Practices Rules, not just basic scientific research. Their focus is on science while avoiding policy recommendations. Voting members of CMER are approved by the Board, and are representatives of each of the major stakeholder groups. There are currently seven Scientific Advisory Groups (SAG groups) serving CMER. These include advisory groups on bull trout, in-stream, landscape and wildlife, riparian, eastside issues, upslope issues, and wetlands. Issues pertaining to water quality that are currently being

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<sup>10</sup> The law does allow for modifications made necessary by act of the Legislature or court decisions.

<sup>11</sup> The Forest Practices Board is the regulating body for forest practices in the state of Washington.

worked on by the adaptive management team include: riparian ecology and management, roads and mass wasting, fish passage, stream typing, and wetlands.

The Forest Practices Rules consistent with the FFR include provisions for an on-going adaptive management program.<sup>12</sup> WAC \*222-08-035 (page 8-2) states, "*The [adaptive management] program provides assurances that rules and guidance not meeting aquatic resource objectives will be modified in a streamlined and timely manner.*" Additionally, WAC \*222-12-045 (starting on page 12-8) provides detailed rules by which the adaptive management program will be managed. "*The purpose of the program is to provide science-based recommendations and technical information to assist the board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives.*"

The FFR recognizes, "*the Report's monitoring and adaptive management plan offers a significant improvement over the current program. This plan promises to provide both effectiveness and trend monitoring, and to inform a rigorous and reliable adaptive management process.*" "*...We acknowledge uncertainty exists as to when water quality standards will be met. This is understandable given the scale of the Report (state and private forest lands in the State of Washington) and the long time frame necessary for natural processes and other practices to recover. We rely on monitoring and adaptive management to inform us whether the buffers and other practices are adequate and will be fully protective of functions and water quality standards. EPA and Ecology will evaluate the effectiveness of baseline rules and adaptive management for the life of the assurances.*" "*...The Report assures implementation and as such it offers early water quality protection that precedes any TMDL or potential TMDL alternative that would be produced at a later date, should that become necessary.*"<sup>13</sup>

### **1. What factors are considered when deciding to use an adaptive management approach?**

In the case of the Washington Forest Practices Rules (example #4), the rules were revised because it was recognized that additional protection was needed to comply with the Clean Water Act (CWA) and the Endangered Species Act (ESA). However, at the time of the revisions, there were several areas where scientific data were lacking. In these cases, the rules were negotiated with the stakeholder group with the understanding that additional attention would be focused on the issue through the adaptive management program. In a more generic sense, adaptive management fills the gaps when management action is needed, but scientific information is limited. It provides an opportunity to further modify the proposal over time based on best available science, and provides ongoing mitigation for management activities.

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<sup>12</sup> The Forest Practices Rules are available at: [www.dnr.wa.gov](http://www.dnr.wa.gov)

<sup>13</sup> Schedule M-2 of the FFR, page 169.

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However, before an adaptive management program can be subject to analysis through an EIS, a formal process must be established to evaluate the potential effectiveness of the program. Ideally this process should include guidelines for incorporating new information to refine regulations, and evaluation of the research and monitoring results to determine their relevance and significance to regulations. Additionally, an adaptive management program must also be designed to readily identify critical problems and respond to them in a timely manner. For an adaptive management program to be responsive: 1/ data must be gathered in a manner that allows for ready identification of the most significant resource issues, 2/ evaluation of information and decision-making cannot be significantly delayed in dispute resolution process; and 3/ adequate funding must be secured in advance to ensure no critical delays, particularly in the collection of research and monitoring data. Enforcement of the process is also critical to ensure that once decisions have been made to modify management practices or objectives, all parties involved are held accountable.

Another key element of an effective adaptive management program is monitoring. Three types of monitoring are covered in DNR's Adaptive Management Program: 1/ Compliance monitoring- designed to determine if landowners are following the Forest Practices Rules, 2/ Effectiveness monitoring- designed to determine how well the management approaches are meeting resource objectives; and 3/ Validation monitoring- designed to determine if the assumptions (or resource objectives) upon which the regulations were based are correct.

DNR's Adaptive Management Program is a formal process that is consistently applied across the state. The adaptive management process has been established by the Forest Practices Board by rule. A committee has been appointed, titled Cooperative Monitoring Evaluation and Research (CMER), to impose accountability and formality in the process. CMER is lead by a full time adaptive management program manager appointed by the board. This coordinator has credentials as a scientist and researcher.

For the DNR Forest Practices Rules, the Adaptive Management process necessarily includes evaluation of the research and monitoring results to determine their relevance and significance to regulations. Additionally, a set of protocols and standards have also been developed to define and guide the execution of the process. An independent scientific review committee has been established to oversee the management process. These protocols and standards govern, but are not limited to, the following:

- Content and presentation of hypotheses and/or data used to support requests for rule change or new rule development or initiation of research or monitoring projects,
- Requests for initiation of monitoring programs as appropriate or research projects and the review and decision-making process to be applied to such requests;
- Format and processes for reporting results of the program to the Forest Practices Board;
- Monitoring programs as appropriate;

- Analysis and evaluation of resource and operational impacts;
- Peer review processes and reviews of study designs;
- The process of reporting results and initiating requests for changes in statute or regulation; and
- Coordination with other statewide efforts on salmon, steelhead, bulltrout, and clean water.

Additionally, a formal dispute resolution process is in place, such that if consensus is not reached among TFW participants on interpretation of research results, recommended direction or other controversies, the Forest Practices Board will make the final determination subject to rights of appeal.

Accountability is established by tying the process directly into the forest practices Board and opening the process to public review and outside scientific review by the Scientific Review Committee (SRC). The forest practices board, CMER, SRC, TFW policy committee and the CMER administrator are empowered to conduct the required activities of the adaptive management process.

Overall performance goals have been established that restrict forest practices, either singly or cumulatively, from impairing the capacity of aquatic habitat from: a) supporting harvestable levels of salmonids, b) supporting the long-term viability of other covered species; or c) meeting or exceeding water quality standards.

Funding is always an issue for governmental programs, however for the DNR's Forest Practices Rules, funding has been secured for the immediate time being. New sources of funding are being explored.

## **2. How can environmental impact analyses be structured to consider adaptive management?**

An EIS was completed under SEPA for the Washington State Forest Practices Rules in April 2001. Adaptive management was a major component of all three alternatives analyzed. Additionally, a joint EIS will be prepared under NEPA/SEPA within the next 3 years that also includes the same adaptive management program under its preferred alternative.

DNR's Adaptive Management Program was designed in detail prior to inclusion in the EIS, and included process descriptions and formal structure. Additionally, specific areas of focus of future research were identified. Therefore, it provided a basis that could be then analyzed in the EIS by stating that further impacts, that were not evident at the time that the EIS was prepared, would be identified and addressed through the adaptive management program.

The SEPA EIS provided analysis of the adaptive management program in several areas:

First, adaptive management is defined in the glossary. Chapter 2 describes each of the proposed alternatives and the role that adaptive management will play under each of the environmental conditions analyzed<sup>14</sup>. The preferred alternative included timelines and descriptions of processes in its description of the adaptive management. Areas that are not specifically addressed through the description of the preferred alternative could be included through the adaptive management process. Additionally, adaptive management is included as a separate component under the analysis, along with other landscape conditions and management actions.

Chapter 3.1 of the SEPA EIS states, *"The scientists who conducted the analysis for this EIS developed risk statements based on best professional judgment after weighing all of the quantitative evaluation criteria that were developed, as well as their review of the scientific literature. They also considered the performance targets identified in Schedule L1 of the Forests and Fish Report<sup>15</sup> and the likelihood that they would be achieved. Further, they considered the fact that each alternative incorporates a level of adaptive management, which allows for change in the rules over the long-term, based on feedback from research and monitoring activities. In giving consideration to adaptive management, the efficiency and time lag involved for each adaptive management program was also evaluated."*

Appendix I of the SEPA EIS provides a detailed discussion of the Adaptive Management Program. Page 1 of appendix I states, "Adaptive management helps reduce the risk of decision-making, particularly in situations where resource managers are dealing with significant levels of uncertainty and considerable consequences (e.g. species extinction)."

### **3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?**

Subsequent NEPA analysis of adaptive management would be required in the following circumstances:

- If the adaptive management process doesn't do what it says it will do, leaving resources vulnerable.
- If, through the adaptive management process, the rules change so significantly that there is a greater risk to the resources.
- If the adaptive management process is discontinued for some reason, such as lack of funding.

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<sup>14</sup> See also Table 2-14, Summary and Comparison of the Environmental Effects of the Alternatives.

<sup>15</sup> Schedule L1 is a part of the Forests and Fish Report and provides a detailed description of the Adaptive Management Program.

**4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?**

Factors that should be considered when including an adaptive management component include the potential for the following:

- Lack of consistent application of adaptive management, including monitoring, due to lack of established policy;
- Lack of established standards and guidelines for implementation rendering the process informal;
- Public concern over biased decision-making, including resource objective definition; research project selection, and interpretation of research and monitoring results;
- Lack of a process of incorporating the use of outside research;
- Lack of a dispute resolution process within TFW to ensure a consistent and streamlined approach to decision-making within TFW that will not significantly delay the adaptive management process; and
- Lack of adequate long-term funding to ensure the uninterrupted collection and analysis of information to support the process.

In the case of DNR's adaptive management program, the areas identified for future research included the primary components and resources that the rules were intended to protect. This allowed flexibility in areas to be incorporated at a later time. Additionally, there was some indication at the time that the Forest Practices Rules were written that certain areas lacked scientific data. These areas were then included in the description of the Adaptive Management Program.

**E. Categorical Exclusions:**

Categorical exclusions seem appropriate in certain circumstances. Washington's SEPA provides for categorical exemptions (attached); but also provides a "safety valve" under unique circumstances where categorical exemptions may place resources at risk.

**F. Additional Areas for Consideration:**

No comments at this time.

In summary, the Washington State DNR encourages the NEPA implementation process to adopt practices that satisfactorily respond to state and local agency regulatory and

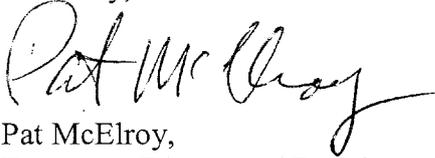
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proprietary concerns on new project proposals. Recognizing state and local concerns, and successfully implementing mitigation practices to address these concerns, are characteristics that lead to an effective cooperative agency relationship/process that realizes project proposals without costly delays.

If you have any questions, please feel free to contact me at (360) 902-1603.

Sincerely,



Pat McElroy,  
Executive Director of Regulatory Programs  
Washington State Forester

cc. Washington Department of Natural Resources  
Debora Brown Munguia, Federal Assurances Project Manager  
Lenny Young, Forest Practices Division Manager  
Geoff McNaughton, Adaptive Management Program Manager  
Stephen L. Saunders, Assistant Division Manager, Asset Management and  
Protection Division  
Howard Thronson, Product Sales and Leasing Division Manager

National Association of State Foresters  
Stefan Bergmann, NASF Legislative Assistant

**WAC 197-11-268 MTCA interim actions.** The following shall apply when an interim action (WAC 173-340-430) is conducted as part of a remedial action conducted by ecology, or by a potentially liable person under an order, agreed order, or consent decree under MTCA.

(1) If the interim action will not have a probable significant adverse environmental impact, the lead agency shall issue a DNS which may be combined with the public notice of the interim action, provided that for proposals listed in WAC 197-11-340 (2)(a) the comment period is no less than fifteen days prior to the effective date of the MTCA document.

(2) If the interim action will have a probable significant adverse environmental impact, the lead agency shall issue a determination of significance. If early scoping has already been performed for the facility under WAC 197-11-265, no additional scoping is required. If early scoping has not been performed, the lead agency shall issue a DS and scoping notice, allowing at least a twenty-one day advance comment period (WAC 197-11-408).

(3) The final EIS shall be issued no later than the issuance of the interim action report or the issuance of an order, agreed order, or decree.

[Statutory Authority: RCW 43.21C.110. 95-08-041 (Order 94-22), § 197-11-268, filed 3/31/95, effective 5/1/95.]

### PART THREE - CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATION

**WAC 197-11-300 Purpose of this part.** This part provides rules for:

(1) Administering categorical exemptions for proposals that would not have probable significant adverse impacts;

(2) Deciding whether a proposal has a probable significant adverse impact and thus requires an EIS (the threshold determination);

(3) Providing a way to review and mitigate nonexempt proposals through the threshold determination;

(4) Integrating the environmental analysis required by SEPA into early planning to ensure appropriate consideration of SEPA's policies and to eliminate duplication and delay; and

(5) Integrating the environmental analysis required by SEPA into the project review process.

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-300, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-300, filed 2/10/84, effective 4/4/84.]

**WAC 197-11-305 Categorical exemptions.** (1) If a proposal fits within any of the provisions in Part Nine of these rules, the proposal shall be categorically exempt from threshold determination requirements (WAC 197-11-720) *except* as follows:

(a) The proposal is not exempt under WAC 197-11-908, critical areas.

(b) The proposal is a segment of a proposal that includes:

(i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or

(ii) A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction. If so, that agency shall be the lead agency, unless the agencies with jurisdiction agree that another agency should be the lead agency. Agencies may petition the department of ecology to resolve disputes (WAC 197-11-946).

For such proposals, the agency or applicant may proceed with the exempt aspects of the proposals, prior to conducting environmental review, if the requirements of WAC 197-11-070 are met.

(2) An agency is not required to document that a proposal is categorically exempt. Agencies may note on an application that a proposal is categorically exempt or place such a determination in agency files.

[Statutory Authority: RCW 43.21C.110. 95-07-023 (Order 94-22), § 197-11-305, filed 3/6/95, effective 4/6/95; 84-05-020 (Order DE 83-39), § 197-11-305, filed 2/10/84, effective 4/4/84.]

### WAC 197-11-310 Threshold determination required.

(1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt, subject to the limitations in WAC 197-11-600(3) concerning proposals for which a threshold determination has already been issued. A threshold determination is not required for a planned action (refer to WAC 197-11-164 through 197-11-172).

(2) The responsible official of the lead agency shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (WAC 197-11-784). If the lead agency is a GMA county/city, that agency must meet the timing requirements in subsection (6) of this section.

(3) The responsible official shall make a threshold determination no later than ninety days after the application and supporting documentation are determined to be complete. The applicant may request an additional thirty days for the threshold determination (RCW 43.21C.033).

(4) The time limit in subsection (3) of this section shall not apply to a county/city that:

(a) By ordinance adopted prior to April 1, 1992, has adopted procedures to integrate permit and land use decisions with SEPA requirements; or

(b) Is planning under RCW 36.70A.040 (GMA) and is subject to the requirements of subsection (6) of this section.

(5) All threshold determinations shall be documented in:

(a) A determination of nonsignificance (DNS) (WAC 197-11-340); or

(b) A determination of significance (DS) (WAC 197-11-360).