WASHINGTON STATE DEPARTMENT OF ECOLOGY

Toxics Cleanup Program Policy

Policy 130A

Resource Contact: Policy and Technical Support Staff *Effective:* December 22,1998

References: *Revised:* July 28, 2004

Coordination of SEPA and MTCA

This policy clarifies the relationship and coordination between the State Environmental Policy Act (Chapter 197-11 WAC) and the MTCA regulation (Chapter 173-340 WAC). Interested staff also should read the Ecology SEPA procedures, Chapter 173-802 WAC. See the SEPA Handbook and Ecology Employees SEPA Notebook for detailed guidance regarding agency responsibility under SEPA.

In general, SEPA is triggered at cleanup sites whenever Ecology takes action that could affect the environment such as initiating contracted cleanup or issuing a decision document such as a cleanup action plan or permit (or for sites exempt from permits, an action comparable to issuing a permit). Studies and investigations typically do not require an evaluation under SEPA nor do "no further action" letters. See paragraph 4, below, for more detailed guidance.

1. Ecology Will Coordinate SEPA and MTCA to Avoid Duplication

When the department is the lead agency in a remedial action requiring SEPA compliance, it will coordinate the requirements of each regulation to avoid duplicate efforts (see paragraph 8 for determination of lead agency). This may include combining documents, notices, and public review and comment periods, providing the requirement of both Chapter 173-340 WAC and Chapter 197-11 WAC are fulfilled.

For instance:

A. Jointly announcing the availability of the Remedial Investigation/Feasibility Study (RI/FS) or proposed cleanup action plan and issuance of the SEPA determination; or

B. Combining the MTCA public notice for orders and decrees requiring an RI/FS with issuance of a scoping notice as required under SEPA; or,

C. Combining the draft EIS and RI/FS into a single document

When appropriate, Ecology may use existing documents to support its determination or to supplement an EIS. See WAC 197-11, Part Six and the combined adoption and determination forms in the SEPA Handbook (attached) for additional guidance regarding the use of existing environmental documents.

2. The Department Generally Will Begin a SEPA Evaluation Early in the MTCA Process with the Final Determination No Later Than Upon Issuance of the Draft Cleanup Action Plan

Remedial Actions: Specific timing requirements for remedial actions other than interim actions, are identified in WAC 197-11-259 through 265. Under WAC 197-11-259 the initial review must begin before the RI/FS is conducted. Thereafter, SEPA environmental review should be an ongoing part of the planning process for a cleanup action.

A SEPA threshold determination, dictated by the availability of adequate information, may occur with the RI/FS or at other points in the process, but no later than the proposed cleanup action plan. A Determination of Non-significance (DNS) can be issued no earlier than the RI/FS and no later than the draft cleanup action plan (see WAC 197-11-259). Issuance of the draft cleanup action plan will generally be the step in the process when a threshold determination under SEPA will be made. However in some cases, Ecology may be able to make a SEPA threshold determination before a draft cleanup action plan is issued. An example would be a situation where it is evident early in the process that the cleanup will have a significant environmental impact.

Interim Actions: Specific timing requirements for interim remedial actions are identified in WAC 197-11-268.

3. The SEPA Environmental Checklist Will be Reviewed at the Scoping of the RI/FS Phase

The environmental checklist, form WAC 197-11-960, will be reviewed at the RI/FS scoping phase. The intent of early consideration of the environmental checklist is that it be used as a tool to assure that adequate information will be available in order to assess the impact of a proposed cleanup action. Site managers will refer to the checklist and be familiar with its contents including the elements of the environment, as development of the RI/FS commences in order for this tool to be used most effectively.

Ecology will make a threshold determination if during early review of the checklist it is apparent that adequate information exists to complete the checklist. Ecology has the responsibility to ensure that the checklist is completed, but may require the potentially liable person(s) to complete the checklist. Ecology may incorporate a requirement for completion of the environmental checklist into an order or decree.

A Determination of Significance (DS)/scoping notice or an early scoping notice can be issued prior to the RI/FS, but a DNS cannot be issued prior to the RI/FS.

4. Studies and Data Collection Are Exempt from SEPA Requirements

According to WAC 197-11-800(11), (12), (17), and (19) procedural/judicial activity and studies, and data collection are exempt from SEPA requirements. In the MTCA process, this usually includes:

A. Conducting an RIFS (with or without an order or consent decree). [WAC 197-11-800(12)]

B. Conducting a Site Hazard Assessment. [WAC 197-11-800(18)]

C. Adding a site to or removing a site from the department's database or hazardous sites list [WAC 197-11-800(20)]

D. Issuing an order or decree under WAC 173-340-520 to 540. [WAC 197-11-800 (12)(a)]. Activities which require a permit or would normally require a permit except for the fact that the procedural requirements for such permit are exempt under RCW 70.105D.090, to carry out the order or decree are not exempt.

E. Other situations as per WAC 197-11-800.

Note: If a permit is required or would normally be required except for the fact that the procedural requirements for such permit are exempt under RCW 70.105D.090, to conduct an SHA or RI/FS, SEPA may be triggered even at these early steps in the process. In such situations the checklist will be completed for the specific action triggering SEPA and a threshold determination will need to be made. See WAC 197-11-070 (3).

5. Emergency Actions Under MTCA Are Exempt from SEPA Requirements

Generally, if there is insufficient time to complete SEPA and there is an imminent threat to public health or safety, or public or private property, or a threat of serious environmental degradation, the action may be considered exempt from SEPA under the emergency exemption in WAC 197-11-880 (generally 20 days to complete a DNS).

6. Section Managers Will Be the SEPA Responsible Official

The responsible official will make the threshold determination and issue the Determination of Significance or Non-Significance per WAC 197-11-802. Refer to the following attached SEPA forms:

A. Environmental checklist, form WAC 197-11-960;

B. Determination of nonsignificance, form WAC 197-11-970;

C. Determination of significance, form WAC 197-11-980

Generally, the Toxics Cleanup Program section manager will be the responsible official for site cleanups where both MTCA and SEPA requirements apply. In situations where multiple Agency programs have responsibility for issuing permits for the action, see Chapter 173-802 WAC (attached) to determine who will be the SEPA responsible official. It is important that each threshold determination be signed by the appropriate responsible official.

7. Public Notice Requirements Under SEPA

Public notice under SEPA (WAC 197-11-510) is required for any DNS with a comment period, for any scoping notice, and any draft EIS or draft supplemental EIS. The specific SEPA public notice requirements are contained in Ecology's SEPA procedures under WAC 173-802-100.

Public notice requirements under SEPA differ from those under MTCA. Requirements for each regulation must be met except for those situations where a joint public comment period is opened, in which case the longer of the two comment periods shall apply.

8. Lead Agency Status

The requirements for determining the SEPA lead agency are provided in WAC 197-11-253. Ecology will not be lead agency if the PLP is a state or local agency. Ecology will be the lead agency for cleanup actions conducted under MTCA except where the local jurisdiction has received a project application prior to Ecology's making a threshold determination; or, where the site cleanup is incidental to a larger project (for instance, construction of a shopping center when the site cleanup is incidental to the total project). [WAC 197-11-924]

When an agency other than Ecology is the SEPA lead agency, it is required to send Ecology a preliminary document prior to issuing it to the public under WAC 197-11-253(5).

Ecology will take actions necessary to assume lead agency status when:

1. There are multiple agency PLPs and they can not agree on a lead agency; or

2. A DNS has been issued by the local jurisdiction but Ecology believes that the proposed project has probable significant adverse environmental impacts. In this case, unilateral action must be taken by Ecology within 15 days of issuing a DNS. At this time Ecology must begin to prepare an EIS. See WAC 197-11-985 and form 985 (attached).

In certain situations Ecology may want to assume lead agency status, or share lead agency status if other agencies with jurisdiction agree. Refer to WAC 197-11-922 through WAC 197-11-948 for more specific instruction.

Approved:

James J. Pendowski, Program Manager
Toxics Cleanup Program

Attachment to Policy 130A
Typical Integrated SEPA/MTCA
Review Process

The Model Toxics Control Act provides flexibility in the procedures used to evaluate contaminated sites. This outline describes some options for combining MTCA and the State Environmental Policy Act.

MTCA Steps	SEPA Steps
1. Identify contaminated site	1. No comparable step
2. Identify Potentially Liable Persons (PLPs)	2. Identify the SEPA lead agency (WAC 197-11-253)
3. Before starting negotiations on an agreed order or consent decree or issuing an order OR If Ecology is doing the RI/FS, as part of the process for developing a the scope of work	3. Lead agency conducts a preliminary environmental evaluation by reviewing a blank SEPA checklist (WAC 197-11-256) and decides: • the cleanup is unlikely to have a significant adverse environmental impact (reevaluate during the Remedial Investigation/Feasibility Study (RI/FS) process, 197-11-259) • there is insufficient information to make a preliminary determination on the type of impacts (issue an early scoping notice, 197-11-265) • the cleanup is likely to have a significant adverse environmental impact (issue a DS/scoping notice, 197-11-262) NOTE: The questions in the checklist are usually not answered at this point because there is insufficient information. Reviewers can use a blank checklist to help them think about the various elements of the environment or they can use the list of elements in WAC 197-11-444.
4. Issue order, consent decree, or agreed order for public review & comment OR Issue a scope of work for an Ecology conducted RI/FS	4. Based on the preliminary evaluation (above), an "early scoping notice" or a "DS/scoping notice" may be issued. 4a. The "early scoping notice" is issued when there is insufficient information to determine if significant environmental impacts are likely (WAC 197-11-265). It invites the public to comment before preparing the RI/FS to identify any issues needing to be evaluated. It is not used when an EIS is needed. 4b. If significant impacts are identified and an EIS is required, then a "Determination of Significance/scoping notice" is issued. • Combine the public comment periods and public notices • Distribute the document • Identify any studies or analysis needed for SEPA review (these are in addition to MTCA requirements) (WAC 197-11-262 and 265)
5. Prepare RI/FS	5. Include with the RI/FS any studies or analysis needed under SEPA. 5a. If a DNS appears likely, as soon as sufficient information from the RI/FS is available, reevaluate the potential environmental impacts using a blank SEPA checklist and make a preliminary decision as described in 3 above.

	5b. If the above evaluation indicates there are likely significant adverse impacts and early scoping was not used, begin the EIS process by issuing a scoping notice with a 21-day comment period. ♦ Give public notice ♦ Distribute the document ♦ After the comment period ends, develop the scope of the environmental impact statement ♦ Prepare the draft EIS
6. Issue RI/FS and, if appropriate, draft CAP for public review and comment	6a. Complete a SEPA checklist and issue a DNS OR 6b. Issue a draft EIS • DEIS and RI/FS may be issued as an integrated document or two separate documents • Combine the public comment periods and public notices • Circulate the document (WAC 197-11-340 for a DNS and WAC 197-11-455 for a DEIS) NOTE: If RI/FS and draft CAP are not issued concurrently for public review, the above steps must be completed no later than when the draft CAP is issued for public review & comment.
7. After public comment period closes	7a. For a DNS, review any comments and either retain, modify, or withdraw the DNS. (See WAC 197-11-340) 7b. For an draft EIS, prepare the final EIS that responds to comments received on the draft.
8. Issue a final CAP	8. Issue final EIS and send copies and/or a notice of availability as required by the SEPA Rules. (See WAC 197-11-460)