

October 5, 2012

Tom Clingman  
SEPA Policy Manager  
Department of Ecology  
PO Box 47703  
Olympia WA 98504-7703

RE: State Environmental Policy Act comments – pre-rule draft-proposals

Mr. Clingman:

On behalf of the Association of Washington Business (AWB), I would like to thank you for the opportunity to comment on the SEPA pre-rule draft-proposals under consideration by the state's Department of Ecology. AWB is the state's oldest and largest statewide business association, representing more than 8,000 member companies as the state's chamber of commerce, as well as the manufacturing and technology Association. While our membership includes well-known, larger employers in the state, more than 90 percent of AWB members employ fewer than 100 people and more than half of our members employ fewer than 10.

We recognize the extraordinary efforts made by Ecology, as well as other participants, to pull together such a broad group of stakeholders to discuss much needed reforms within SEPA, especially given the time restraints.

AWB supports several of the categorical increases, and changes to the environmental checklist, being considered in proposals put forth. In particular, we are supportive of proposal "C" of the pre-rule drafts that were presented by Ecology earlier this week. Following are a few comments concepts we support from proposal "C", as well as other concepts contained within the original proposals:

- Establishing exemptions by area: We support the concept of applying various levels of exemptions dependent on the location of a proposed project;
- Dividing single family and multi-family into separate exemptions. We do believe that multi-family may need to be defined, as it currently doesn't exist under WAC 197-11;

- Harmonizing landfill and excavation provisions: We agree with Ecology that there was need to harmonize the landfill and excavation exemption within the exemptions for minor new construction, to ensure the intent of the exemptions for minor new construction are realized;
- Checklist efficiency: We support the addition of subsection (6) to 197-11-315, which allows the local government to identify questions that are “adequately covered by a locally adopted ordinance....,” and allows for the electronic submittal of the checklist.

In addition, we support provisions in Ecology’s proposal “C” that would establish a new standard by which local governments would adopt the proposed thresholds, as well as eliminate public notice requirements for any new project that would be categorically exempt; if a local government adopts the new thresholds.

Although we do appreciate the process provided by Ecology, and agree with several provisions under consideration, we do have a few concerns that we believe ecology should consider.

First, while we are pleased to see the proposed increases to thresholds for categorical exemptions under consideration during the 2012 phase of the SEPA rule process, we don’t understand the “test” applied to arrive at these numbers.

For instance, during SEPA Advisory Committee process local governments recommend higher thresholds than those in the Ecology proposal. It is our understanding, however, that local governments arrived at the threshold levels by reviewing data on completed SEPA reviews where either a DNS or mitigated DNS was issued. In short, the local government thresholds were based on a “test” that would seem to be defensible, showing no significant adverse environmental impact would result by adopting higher threshold levels.

Our question is what “test” did Ecology develop to generate defensible exemption numbers? As Ecology acknowledged, the intent of Legislature in section 1 of E2SSB 6406 stated, “the legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state’s natural resources...in order to streamline regulatory processes and achieve program efficiencies....” This would seem to indicate the Legislature would have expected Ecology to review the overlay of environmental policies, to determine what the level of exemptions could be.

Why does this matter? Ecology’s latest proposal “C” represents a consensus perspective from the SEPA Advisory Committee, with the exception of a final exemption level for *Office, school, commercial + parking*. Proposal “C” is considering either a level of 20,000 sq. ft. with 60 parking or 40,000 sq. ft. with 120 parking. The lack of a “test” would seem to indicate an arbitrary number could be picked. In the absence of a “test” AWB recommends going with

the 40,000 level for projects in the incorporated area or within the UGA. Underlying development regulations would ensure that proper infrastructure is in place, and would help target growth to appropriate places.

That being said, we understand there will be an opportunity to review the categorical exemption levels again during the 2013 rule making process. We encourage Ecology to establish a "test," with the help of stakeholders, to determine more appropriate exemption levels.

Second, the checklist streamlining process in 2012 is expected to produce some need efficiencies, but feedback suggests there are more opportunities to broaden the review. The hope is to eliminate what is perceived as a paper-pushing exercise. We look forward to working with Ecology during the 2013 rule process to identify additional changes to the checklist.

Finally, as you are aware, E2SSB 6406 states that Ecology must, "at a minimum, increase the existing maximum threshold levels for...the installation of an electric facility, lines and equipment, or appurtenances, other than substations."

Based on our conversations with our member companies, the current Ecology proposal to increase electrical facility thresholds does not provide an increase to the existing threshold level. In fact, it is our understanding the language being proposed by Ecology would actually weaken the current exemption threshold in current rule.

We understand the Department continues to work with utilities to perfect the language being considered. AWB supports the letter sent to Ecology on Monday, October 1, 2012, and would encourage Ecology to adopt the language being proposed by the utilities in the aforementioned letter.

Again, thank you for the opportunity to review and comment on the pre-rule draft-proposals. AWB looks forward, with our member companies, to continuing our partnership with the Department to update the State Environmental Policy Act.

If you have any questions regarding our comments, or if we can be of any other assistance in the SEPA rule process, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Houskeeper". The signature is fluid and cursive, with the first name being more prominent.

Brandon Houskeeper  
Association of Washington Business  
Director, Government Affairs