



May 13, 2013

Washington State Department of Ecology  
Attn.: Fran Sant, SEPA Rulemaking Coordinator  
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Lacey, WA 98503-1274

Sent electronically to: [fran.sant@ecy.wa.gov](mailto:fran.sant@ecy.wa.gov)

Dear Ms. Sant:

Thank you for this opportunity to comment on the Department of Ecology's ("Ecology") recent draft of SEPA exemption rules. Although the state's public ports do not have a seat at the table of the SEPA<sup>1</sup> Advisory Committee, they do have a keen interest in the possible outcomes that could result from the committee process. Given the role our state's public ports play in international trade, we are concerned that negative outcomes from the current process could potentially impact trade in this the most trade dependent state in the nation.

Specifically, we are concerned about the following:

- **New definition of "industrial use" adds unnecessary process to minor activities.** Although the word "industrial" conjures images of heavy equipment moving bulk commodities, the reality is that these operations utilize many ordinary facilities common to administrative or commercial operations. These include facilities such as washrooms, office spaces, small storage sheds and other minor buildings as well as treatment pads and awnings used for stormwater isolation.

By excluding industrial uses from the exemption for "minor new construction," Ecology is creating additional process for minor projects simply because they occur on properties where industrial activities occur.

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<sup>1</sup> "SEPA" stands for "State Environmental Policy Act."

For example, we know of a project at a secure marine terminal where a ladies washroom is being constructed to accommodate the needs of a female Longshore worker. The washroom is contiguous to the existing facility for male Longshore workers and the potential impacts are little more than adding a sink and latrine to an existing facility.

However, under the agency's proposal, this very minor construction project would require a full checklist, determination and public notice. Meanwhile, construction of new housing tract (with up to 30 new houses or 60 multifamily units) would remain exempt. This is extremely problematic.

The green table entitled "Summary – Draft proposed Amendments for Exemption Subsections" says that "industrial uses have different types of impacts from commercial." In many cases, this assumption is simply not correct.

- **Repair of existing bulkheads adds unnecessary process to minor maintenance activities.** Marine ports regularly make minor maintenance repairs to existing bulkheads. In many cases, these repairs are extremely minor, such as replacing some fallen rip rap or replacing a small amount of fill.

Since these bulkheads are existing structures, on-going maintenance activities would have little (if any) impact on existing conditions. In fact, regular maintenance of these structures actually benefits existing conditions by ensuring that additional erosion or structural failure does not occur. In a port environment, where labor workers are using heavy machinery, even minor maintenance activities can have an important impact not only on the environment, but also on the immediate protection of human life.

Looking at other government agencies, the Army Corps of Engineers (the "Corps") and federal services allow for the streamlined review of minor bulkhead repairs. Also, the state Department of Fish and Wildlife issue emergency hydraulic permits for bulkhead maintenance. Therefore, bulkhead repairs are already covered by state and federal agencies that recognize the importance of making repairs quickly and efficiently. Adding an additional layer of process – in the form of a SEPA checklist, determination and public notice – is unnecessary, potentially unsafe and may lead to further environmental degradation due to the deferral of maintenance on existing structure.

- **Language specific to dredging of more than 50 yards should remain intact.** Recognizing concerns that were raised about the new language regarding dredging (pg. 6), ports support this language and encourage Ecology to include it in the final rule draft. This activity is essential to on-going repair and maintenance activities and is already covered by hydraulic permits as well as Corps. permits. Therefore, additional process is not necessary at this time.

In closing, thank you again for considering our perspective on these important elements of the SEPA draft rule. We look forward to further discussions.

Sincerely,



Johan Hellman  
Assistant Director

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Tom Clingman  
Brenden McFarland