

May 31, 2013

Annie Szvetcz  
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Washington State Department of Ecology

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Re: Comments on 2013 SEPA Rulemaking Exemptions  
Draft Proposed Rule Language (May 3, 2013)

Dear Ms. Szvetcz:

**EXECUTIVE DIRECTOR**

Craig T. Kenworthy

**BOARD OF DIRECTORS**

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Ryan Mello, Councilman

We write to comment upon the draft proposed rule language regarding SEPA exemptions dated May 3, 2013. We are a local air agency with jurisdiction covering King, Snohomish, Pierce and Kitsap Counties. Our agency is responsible for implementing the Washington Clean Air Act, ch. 70.94 RCW (“CAA”), and we issue air permits pursuant to the CAA to stationary sources. For purposes of SEPA, we act as the Lead Agency for the applications where no city or county has Lead Agency authority and often support local cities and counties by providing comments and expertise on air emission issues related to city or county permit applications. In certain circumstances, our agency also sometimes acts as a Co-Lead Agency with another entity for SEPA when requested by that entity.

The focus of our comments is one aspect of the draft changes to the WAC exemptions currently being considered by the Department of Ecology (“DOE”): the proposed changes to WAC 197-11-800(C)(1)(a) and 197-11-800(D)(2). The May 3, 2013 version of these two provisions suggests striking the language: “any license governing emissions to the air...” This strikeout would remove the exception to the minor new construction exemptions for air permits and would include air licenses in an exemption from SEPA review.

We oppose this strikeout because for our agency SEPA plays an important role in our agency’s review of applications. Our agency performs SEPA review for all types of air permits, from small paint booths and coffee roasters to larger proposals, such as composting, landfill and sewage treatment facilities and boilers, asphalt plants and remediation projects. While the agency has adopted air regulations pursuant to the CAA that apply to permit applications, SEPA plays an important role by allowing the agency to review air impacts not traditionally covered by CAA regulations such as indirect and long-term impacts, and impacts such as odors.

For example, in reviewing an application for a new or modified asphalt production facility, SEPA, not the CAA, provides the agency with the authority to limit odors from the asphalt trucks servicing the facility. Thus, SEPA enables the agency to identify and to address the truck odors that may impact the municipality in which the facility was located, and the facility's neighbors. SEPA also provides authority for the agency to identify and require important mitigation and monitoring conditions for air emissions. So while certain aspects of minor construction may be appropriate for exemptions, air licenses (or permits) often have air impacts that need and should be evaluated pursuant to SEPA as currently occurs.

In addition, it is our experience that cities, counties and local health departments routinely seek assistance from our agency to identify and evaluate air impacts from applications submitted to those entities and sometimes asks the agency to serve as a Co-Lead Agency for SEPA review when air impacts are a prominent aspect of an application. Retaining the current exemption language in WAC 197-11-800(C)(a) and -800(D)(2), i.e. not removing the exception, would preserve the ability and authority of local air agencies to continue to serve local jurisdictions in these roles.

Finally, it appears that in conjunction with the strikeout language removing the exception, another change is proposed to WAC 197-11-800(C)(a) and -800(D)(2) to attempt to limit the scope of the exception removal: adding a definition of "industrial" taken from the Model Toxics Control Act ("MTCA") with the implication that industrial uses would not be exempted. Based upon what we have seen to date, adoption of this definition would not address the full implications of removing the exception. The MTCA definition is not a known or accepted SEPA or CAA definition, and to our knowledge the definition is not used by any entities to implement SEPA as now proposed. Also for land use purposes, cities and counties often use their own definitions of terms like industrial and commercial which would confuse even further jurisdictions' ability to follow the WACs. Moreover, regulation of sources under the CAA does not fall along demarcations such as "industrial" or "commercial" – it is the types of air contaminants and whether a source is stationary that dictate the types of permit requirements under the CAA. Demarcating SEPA for air permits along "industrial" or "commercial" lines does not match the CAA's established regulatory framework and would create an inconsistency that could mean significant air impacts from proposals could be missed.

In general, we ask that DOE not adopt the strikeout language removing the exception for air licenses from WAC 197-11-800(C)(a) and -800(D)(2). Please let us know if you have any questions or would like to discuss this further. We are interested in continuing to communicate with you about this important issue.

Thank you.

Sincerely,



Jennifer A. Dold  
Attorney