



Focus on SEPA Exemptions

Water Quality Program and Shorelands and Environmental Assistance Program

Notice to SEPA Lead Agencies

Construction Stormwater Permit Coverage Includes SEPA Review

Projects that need coverage under the Department of Ecology's (2005) Construction Stormwater General Permit are not exempt from the State Environmental Policy Act (SEPA). This is true even if they qualify as "minor new construction" or "maintenance and repair" activities under the SEPA rules. We encourage state and local agencies, private developers and the public to learn more about why SEPA review is required for most construction projects one acre and larger.

Stormwater Permit for Construction Projects

The Construction Stormwater General Permit (CSWGP) regulates stormwater runoff from construction activities to protect water quality. Ecology revised this general permit in 2005 and lowered the threshold for permit coverage from 5 acres of soil disturbance to **one acre**, based on EPA's Phase II Stormwater Rule. Consequently, many more construction projects are now subject to the CSWGP and SEPA review. The general permit requires construction operators to:

- Apply for project-specific permit coverage for construction activities that will disturb one acre or more, as well as smaller projects that are part of a common plan of development or sale (e.g., subdivision) that will result in a cumulative disturbance of one acre or more.
- Develop and implement a Stormwater Pollution Prevention Plan with best management practices (BMPs) to prevent erosion and protect water quality.

SEPA is Required for Construction Projects

Ecology's issuance of project coverage under the CSWGP is considered an agency action that requires SEPA review. Due to statutory and rule requirements (see below) related to waste discharge permits, there are no "minor new construction" or other categorical exemptions in the SEPA rules that apply to Ecology's issuance of coverage under the CSWGP.

SEPA Law

The legislature amended the SEPA statute in 1995 and added the following subsection:

RCW 43.21C.0383

Application of RCW 43.21C.030(2)(c) to waste discharge permits.

The issuance, reissuance, or modification of a waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules is not subject to the requirements of RCW 43.21C.030(2)(c). This exemption applies to existing discharges only and does not apply to new source discharges.

The law requires SEPA review when projects need water quality permits that regulate new source discharges. Ecology's issuance of CSWGP coverage meets the statutory requirements for SEPA review because it meets the definition of an "action" as defined by SEPA rules and it regulates new source discharges. Statutory requirements cannot be overridden by rulemaking, so none of the categorical exemptions in part nine of WAC 197-11 applies to construction projects that require coverage under the CSWGP. Consequently, SEPA review must be completed for all projects covered under the CSWGP, except for the following types of proposals that are exempted by statute:

1. Watershed restoration & Fish Habitat Enhancement Exemption (RCW 43.21C. 0382)
2. Infill Development Exemption (RCW 43.21C.229)
3. Planned Actions (RCW 43.21C.031)

SEPA Rules

Part Nine of the SEPA rules (WAC 197-11-800) contains the categorical exemptions adopted by Ecology. These exemptions include "exceptions" – conditions when the exemption will not apply. Projects that qualify as "minor new construction" are not exempt if they require a water discharge permit – such as the Construction Stormwater General Permit. Ecology's issuance of Permit coverage is not subject to any categorical exemptions in the SEPA rules due to the statutory provision that requires SEPA review for this type of permit.

More importantly, the rules state that a specific project might have exempt "aspects" but the entire project and all of its permits, licenses and approvals are subject to SEPA review if one part of the project or one agency approval is not exempt (WAC 197-11-305(1)). **If a project requires coverage under the CSWGP –then all of the other required state and local permits cannot be exempt from SEPA.** This means that minor construction, repair, maintenance, utility and short plat proposals needing CSWGP coverage also require SEPA review.

SEPA Review Process

SEPA Lead Agency

SEPA's lead agency requirements remain the same for projects that need the CSWGP (see WAC 197-11-922 through 948). Local government is the lead for private projects that need local permits. Public agencies are SEPA lead agency for their own projects. Ecology's Water Quality Program is the SEPA lead for private construction projects that need the CSWGP but do not require local permits or approvals. Local agencies should notify project applicants of SEPA and CSWGP requirements.

SEPA in Permit Decision-Making

SEPA review must be complete prior to the issuance of any local or state permits. SEPA ensures that permit decisions are based on the evaluation of high quality environmental documents that accompany proposals through existing agency review procedures. All agency decision-makers must consider the impacts to the overall environment –not just the elements regulated in each permit or approval. SEPA's supplemental authority allows decision-makers to use the environmental review process to condition or deny proposals above and beyond the underlying permit requirements. (see RCW 43.21C.060 and WAC 197-11-660).

For More Information

On the web: See the **Construction Stormwater General Permit** at <http://www.ecy.wa.gov/programs/wq/stormwater/construction>

More about the **State Environmental Policy Act** at <http://ecy.wa.gov/programs/sea/sepa>

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