

Chapter 374-100 WAC
STATE ENVIRONMENTAL POLICY ACT (SEPA)

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WAC

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WAC 374-100-010 Authority. The pollution liability insurance agency adopts these rules under RCW 43.21C.120 (State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-010, filed 12/18/19, effective 1/18/20.]

WAC 374-100-020 Adoption by reference. (1) The provisions of chapter 197-11 WAC (SEPA guidelines adopted by the department of ecology), are hereby adopted by PLIA, and are incorporated in and made a part of this chapter by reference herein, to the extent that the SEPA guidelines are applicable to the programs, activities, and actions of PLIA.

(2) The provisions of this chapter are intended to implement the provisions of chapter 197-11 WAC, and to be consistent therewith.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-020, filed 12/18/19, effective 1/18/20.]

WAC 374-100-030 Purpose. (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the pollution liability insurance agency.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform rules, encourages public involvement, and promotes certainty with respect to the requirements of the act.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-030, filed 12/18/19, effective 1/18/20.]

WAC 374-100-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "PLIA" means the pollution liability insurance agency.

(2) "Proponent" means applicant, as defined in WAC 197-11-716 or party with a proposal, as defined in WAC 197-11-784.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-040, filed 12/18/19, effective 1/18/20.]

WAC 374-100-050 Categorical exemptions. The following activities of the PLIA are within the categorical exemptions contained in the indicated subsections of WAC 197-11-800:

(1) Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation as provided in WAC 197-11-880 including, but not limited to:

(a) Performance of emergency removal and disposal of petroleum products from a tank;

(b) Performance of emergency removal and disposal of soil or groundwater contaminated with petroleum products;

(c) Approval of funding for emergency projects;

(d) Emergency disaster response or maintenance.

(2) All inspections conducted by PLIA of either private or public property for any purpose as provided in WAC 197-11-800 (12)(b) including, but not limited to:

(a) Performing initial investigations of a reported release of heating oil;

(b) Performing periodic review of an environmental covenant;

(c) Inspection related to insurance policies.

(3) All review and payment of claims as provided in WAC 197-11-800 (14)(e) including, but not limited to:

(a) Review and payment of insurance claims under the heating oil pollution liability insurance program;

(b) Review and payment of insurance claims under the commercial underground storage tank reinsurance program.

(4) Providing grants or loans by PLIA's underground storage tank loan and grant program to another agency, as provided in WAC 197-11-800(15).

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-050, filed 12/18/19, effective 1/18/20.]

WAC 374-100-060 Summary of information which may be required of an applicant. (1) The applicant for each proposal for which the PLIA is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the PLIA may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the PLIA at the applicant's cost.

(3) Preparation of EIS is the responsibility of PLIA. The responsible official shall be satisfied that any EIS issued by the PLIA is in compliance with these rules and chapter 197-11 WAC.

(4) Whenever someone other than the PLIA prepares an EIS the responsible official shall:

(a) Coordinate scoping to ensure that the individual preparing the document receives all substantive information submitted by any agency or person.

(b) Direct the areas of research and study to be undertaken and the content and organization of the document.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the document.

(5) An EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment. The applicant may prepare the EIS if judged by the PLIA to be qualified, have the PLIA develop the EIS, or hire a consultant to do so. In any case, the EIS shall be prepared under the direction of the responsible official at the expense of the applicant and final approval is that of the responsible official. Cost of preparing the EIS shall be paid by the applicant and shall include fees of the consultant, the PLIA consultation time and cost of any required materials. If the applicant chooses to hire a consultant to prepare the EIS, the consultant must be mutually agreed upon by the applicant and the PLIA. A performance bond in an amount specified by the PLIA may be required of the applicant to ensure payment of the PLIA expenses pursuant to WAC 197-11-914. Private applicants are encouraged to be involved in the EIS preparation process.

(6) A supplemental EIS shall be prepared as an addition to the EIS if the PLIA decides that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal.

(c) Pursuant to WAC 197-11-600 (3)(c), written comments on the DEIS warrant additional discussion for purposes of its action than that found in the FEIS.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-060, filed 12/18/19, effective 1/18/20.]

WAC 374-100-070 Timing of the SEPA process. (1) As provided by WAC 197-11-055, the SEPA process shall be completed before the pollution liability insurance agency is irrevocably committed to a particular course of action. At the same time, the SEPA process should not be undertaken until a proposal is sufficiently definite to permit meaningful environmental analysis.

(2) When PLIA receives an application or proposal, the agency shall determine whether PLIA's SEPA action is "categorically exempt" or statutorily exempt from SEPA. If exempt, and WAC 197-11-305 does not remove categorical exempt status, PLIA has no further obligation under SEPA.

(3) The threshold determination and any required environmental impact statement (EIS) for PLIA nonproject actions shall be completed prior to official adoption of the action in question.

(4) The threshold determination and any required EIS for issuance of a loan or grant under PLIA's underground storage tank loan and grant program shall be completed prior to issuance of the loan or grant in question. Applicants shall provide all environmental and design information necessary to prepare the appropriate environmental document.

(5) The threshold determination and any required EIS for PLIA actions of a project nature shall in all cases be completed prior to the approval of the location or design of the project in question. Where the project involves remedial actions under the Model Toxics Control Act conducted a potentially liable person under an order or consent decree, the timing and review requirements of WAC 197-11-250 through 197-11-268 will govern as appropriate.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-070, filed 12/18/19, effective 1/18/20.]

WAC 374-100-080 Lead agency determination. (1) PLIA will endeavor to determine whether PLIA or another agency is the SEPA lead agency within five working days of receiving the nonexempt proposal. See WAC 197-11-050 and 197-11-922 through 197-11-940. If PLIA is not the lead agency, PLIA shall send the complete environmental checklist and a copy of the application or proposal to the lead agency with an explanation of why PLIA identified the agency as the lead agency.

(2) PLIA may determine it would be appropriate to share or divide lead agency responsibilities with other agencies. In such an event, one agency will be designated the nominal lead agency, and shall be responsible for complying with the duties of the lead agency under the SEPA rules. Other agencies with jurisdiction shall be notified of the agreement and determination of the nominal lead agency.

(3) Whenever PLIA is an agency of jurisdiction and determines that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under its jurisdiction, the agency may assume lead agency status per WAC 197-11-948. Within ten days of assuming lead agency status, PLIA will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status. Prior to preparation of an EIS for the proposal, PLIA will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-080, filed 12/18/19, effective 1/18/20.]

WAC 374-100-090 Availability, distribution, and costs of environmental documents. (1) When PLIA is the lead agency, PLIA personnel shall distribute SEPA documents as required by chapter 197-11 WAC unless another agency is nominal colead with PLIA. The following are acceptable methods of distribution:

(a) Email environmental documents including attached checklists and backup materials provided the recipient agency or interested party has made its email address available to PLIA;

(b) Mail environmental documents, including attached checklists and backup materials, on CDs or as hardcopies to agency mailing lists that include either general lists or lists for specific proposals or subject areas.

(2) A requestor asking for additional hard copies of a SEPA document may be required to pay additional copying fees per WAC 197-11-504.

(3) PLIA shall use reasonable methods to inform the public when PLIA issues a DNS under WAC 197-11-340, a mitigated DNS under WAC 197-11-350, a scoping notice under WAC 197-11-360, a draft EIS under WAC 197-11-455, a draft supplemental EIS under WAC 197-11-620, a final EIS under WAC 197-11-460, or when PLIA schedules a public hearing under WAC 197-11-502, 197-11-535, and 197-11-610. PLIA shall use two or more of the following reasonable methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements associ-

ated with PLIA's non-SEPA decision (underlying governmental decision), public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notify persons or groups who have expressed interest in the proposal or in the type of proposal being considered, who have expressed interest in proposals located in the affected geographic area, and who PLIA has identified as potentially interested parties;

(b) Publish a notice in a newspaper of general circulation in the area in which the proposal will be implemented;

(c) Post the property with appropriate signage;

(d) Post notices and environmental documents on PLIA's website.

(4) As required under WAC 197-11-508 for state agencies, PLIA shall submit the following environmental documents to the department of ecology for publication in the SEPA register:

(a) DNSs under WAC 197-11-340;

(b) DSS (scoping notices) under WAC 197-11-408;

(c) EISs under WAC 197-11-455, 197-11-460, and 197-11-620;

(d) Adoption notices to the extent required by WAC 197-11-610 and 197-11-630; and

(e) Notices of action under RCW 43.21C.080 and 43.21C.087.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-090, filed 12/18/19, effective 1/18/20.]

WAC 374-100-100 Agency policy—Substantive authority and mitigation. (1) The policy of the pollution liability insurance agency is to avoid or mitigate adverse environmental impacts that may result from agency actions or approvals. This policy results from:

(a) The legislated duties of the agency with respect to protection of human health and the environment; and

(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment (RCW 43.21C.020(3)).

(2) If an action is subject to SEPA, and the proposed activity requires an action, approval or permit from the agency, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the agency may:

(a) Require reasonable alternatives to the action, approval or permit and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the agency's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-100, filed 12/18/19, effective 1/18/20.]

WAC 374-100-110 Designation of responsible official. (1) The responsible official shall carry out duties and functions for the purpose of assuring PLIA's compliance with SEPA and the SEPA rules.

(2) When PLIA is the lead agency, the responsible official shall review the environmental checklist and make the threshold determination in compliance with this chapter, chapters 43.21C RCW and 197-11 WAC, and specifically, WAC 197-11-330.

(3) The responsible official shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate. This includes notice and circulation requirements for threshold determinations.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-110, filed 12/18/19, effective 1/18/20.]

WAC 374-100-120 Procedures when consulted. When a request by another agency for consultation is made pursuant to the provisions of WAC 197-11-912, such request shall be referred for response to the responsible official who shall coordinate the research and field investigations which may be necessary, and supervise the transmittal of the requested information to the lead agency within the time periods specified by WAC 197-11-502.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-120, filed 12/18/19, effective 1/18/20.]

WAC 374-100-130 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 43.21C.120. WSR 20-02-007, § 374-100-130, filed 12/18/19, effective 1/18/20.]