

The Process



THE COMMISSION ON ENVIRONMENTAL POLICY

Creation of the Commission

If 1970 and 1971 provided a receptive climate in Olympia for environmental legislation, the same was not entirely the case a decade later. The 1981 legislature, for example, considered a range of bills which would have substantially limited SEPA's jurisdiction and authority. Although the solution to the identified problems was unclear, there was no mistaking that after ten years of controversy about the act's procedural and substantive requirements, the subject needed to be reviewed in a comprehensive manner. A compromise was reached among the environmental, business, and governmental groups resulting in the passage of ESSB 4190, the SEPA study bill.

Commission Responsibilities

As noted in the executive summary and preface to the proposed rules, the legislature mandated a study of ten years' experience with SEPA, directing that amendments to the act and guidelines be proposed by a bipartisan environmental policy commission, if considered necessary:

... in order to establish methods and means of providing for full implementation of the act in a manner which reduces paperwork and delay, promotes better decision-making, establishes effective and uniform procedures, encourages public involvement, resolves problems which nearly ten years' experience with the act has revealed, and promotes certainty with respect to the requirements of the act (Section 1, Chapter 289, Laws of 1981 (ESSB 4190), RCW 43.21C.200.)

The bill directed the Commission on Environmental Policy to be composed of four members each from the Senate and from the House of Representatives, two representatives each from industry and the environmental community, and one member each from cities and counties, the latter eight members appointed by the Governor. Staffing was provided largely by a diverse 96-member Advisory Committee, special counsel, and personnel loaned from state agencies (all of whom assisted without compensation) and legislative committee staff. An appropriation of \$50,000 was initially provided for operation of the Commission. This was subsequently reduced during the special session in November 1981.

The Commission was required to:

- study SEPA and its administrative rules
- report to the 1983 legislature on the effectiveness of the act and rules
- propose amendments, if necessary, to the act and guidelines

- appoint an Advisory Committee representing various points of view, whose members are knowledgeable or experienced in SEPA principles and practice
- consult with agencies, interest groups, and concerned citizens
- review model ordinances for local government to assure consistency with any changes in the act or guidelines
- use information and advice of agencies, organizations, and individuals, including the federal Council on Environmental Quality

Public Participation

Because public participation has been so central to the Commission's study, it deserves mention at the outset. The Commission was greatly assisted by several hundred people in the past two years who provided suggestions on how to make the SEPA process work better. Interested citizens have contributed well over 10,000 hours to the Commission's study.

In public meetings which were held in September 1981, the Commission invited testimony from a broad array of public officials, organizations and private citizens, affirmatively involving SEPA's critics as well as its friends. Among those represented were the Washington Environmental Council, Sierra Club, League of Women Voters, Washington Forest Protection Association, Association of General Contractors, Washington Association of Realtors, Seattle Master Builders, Chamber of Commerce, Washington Association of Cities, Washington State Association of Counties, and state agencies. Scientists, scholars, and the general public were there.

A second set of public meetings was held eighteen months later, after the Commission had recommended legislation and a draft set of rules. Four public hearings were held across the state in January at Seattle, Olympia, Spokane, and Yakima. Again, the range of organizations and individuals testifying was equally broad.

There was consensus at the January 1983 public hearings among widely diverse witnesses. All expressed the view that SEPA benefitted the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be improved. Witness after witness said that the length and detail of EISs made it extremely difficult to distinguish the important from the trivial.

The degree of unanimity about the direction of the Commission's recommendations was such that, at its hearings in Spokane, city officials, environmental representatives, and an unusual coalition of some 40 industry and labor groups endorsed each other's comments. A week earlier, at the public hearing in Yakima, county planning directors and attorneys, the League of Women Voters, and realtors and industry groups expressed the same sentiments.

The Commission's deliberations are described in more detail elsewhere in this report. In addition to the four public meetings in 1981 and the four public hearings in 1983, the Commission held 17 meetings, plus two meetings with its

Advisory Committee. Because each Technical Committee met frequently and because the Advisory Committee members staffed and participated in every Commission meeting, which is unusual for citizens advisory groups, frequent meetings with the entire 96-member committee were not necessary).

All of these meetings were open to the public, and every meeting had an opportunity for public comment. The Commission members discussed many of the recommendations in great detail.

More than 100 meetings were held by the Commission's drafting committee and the Technical Committees and subcommittees of its Advisory Committee. All of these were open to the public as well, and many interested citizens participated.

The Commission published its draft of the rules in January 1983, after 18 months of detailed review of the SEPA process and consultation with many groups and individuals mentioned, as well as study and consultation on the experience of other states and the federal government. The study included, for example, review of a two-year evaluation by the White House Council on Environmental Quality on the effectiveness of its NEPA Regulations (40 CFR 1500 *et seq.*), which concluded that the new federal rules were working well and should not be amended, although additional guidance would be issued to agencies.

The Commission received further comments on the draft rules during its January hearings and during the legislative process (see legislative history above). In addition, after the enactment of SSB 3006, the Commission sent another letter of invitation to all of the diverse interests on the Commission's Co-Chairs Committee and major organizations testifying at the legislative hearings to invite further comment on any clarifications which might be needed in the rules as a result of the statutory enactment. As a result, additional open meetings and workshops were held in May and June of 1983, as part of preparing the final proposed rules.

Commission Organization

At its August 4 meeting, the members of the Commission unanimously selected Senator Alan Bluechel as Chairman and Yakima County Commissioner Jim Whiteside as Vice Chairman. The Chair requested the Commission to establish an Executive Committee composed of Senator Bluechel, Commissioner Whiteside, and Representative Gene Lux.

The Commission extended an invitation to a wide range of interest groups to submit nominations to serve on the Advisory Committee. The nominees had a broad range of interests and extensive experience and expertise with SEPA. In an effort to encourage public participation, the Commission decided to include nearly 100 people on the Advisory Committee. In order to ensure effective participation, five Technical Committees were established focusing on aspects of SEPA.

The Technical Committees and their initial areas of concern were:

- Guidelines Technical Committee: review of problems in the existing text of the guidelines, focusing on definitions, exemptions, timing and coordination. Ken Kinared and Bob Landau were co-chairs.
- Process Technical Committee: NEPA/SEPA coordination and relationship of SEPA with other environmental regulations. Don Chance and Chuck Mize were co-chairs.
- Contents Technical Committee: goals and policies of SEPA, SEPA's supplemental substantive and authority. Steve Crane and Ellen Peterson were co-chairs.
- EIS Technical Committee: preparation of EISs, including checklist, scoping, format, methodology, consideration of alternatives, and adequacy of EISs. Jim Williams and Vim Wright were co-chairs.
- Legal Technical Committee: review of court cases, SEPA challenges, judicial review and administrative review. John Black and Ralph Thomas were co-chairs.

After appointment of the members of the five Technical Committees, the Commission designated two members of each committee as Co-Chairs (see list on page 3 of this report). These ten people comprised the Co-Chair Committee of the 96 member Advisory Committee, assisted by Special Counsel.

The Commission tried to designate Co-Chairs from diverse perspectives in order to encourage cooperation, if not consensus. The Process Technical Committee was chaired, for example, by two thoughtful and articulate leaders from considerably different constituencies: Don Chance from the Washington Forest Protection Association and Chuck Mize from the Washington Association of Cities, each of whom worked hard to assemble people from related and member organizations to develop and review the recommendations. Similarly, the EIS Technical Committee was co-chaired by two people with considerable knowledge and experience in the administrative and legislative aspects of SEPA and environmental laws, also from quite different points of view: Jim Williams from the Washington Association of Counties, and Crane Wright, a university professor active in many environmental organizations. The task of managing a sizable Technical Committee, as well as focusing on the substance of the recommendations, presented a challenge to each of the Co-Chairs.

The Commission appointed two Special Counsel to advise the Commission, Advisory Committee, and five Technical Committees. At least one Special Counsel attended most Technical Committee meetings and each Commission meeting. Charles Lean, Assistant Attorney General for the Department of Ecology and an author of the existing SEPA guidelines, was appointed as one of the Special Counsel. Kenneth Weiner, a Seattle attorney with the law firm of Preston, Thorgrimson, Ellis & Holman and formerly Counsel and Deputy Executive Director of the White House Council on Environmental Quality and an author of the new NEPA Regulations, was the other Special Counsel.

As the Commission began to act upon specific recommendations and approach the time for drafting any statutory or rule changes, the Commission appointed a Drafting Committee to write the amendments and rules. The Drafting Com-

mittee consisted of Ellen Peterson, a city attorney in Seattle; Judy Runstad, a Commission member representing an industry perspective; Chris Smith, a Commission member representing an environmental perspective (Commissioner Smith left the Drafting Committee when she became a state official); Ralph Thomas, Kirkland city attorney; Norm Winn, a Commission member representing an environmental perspective; and was chaired by Special Counsel Ken Weiner. The Drafting Committee meetings were open to anyone who wished to attend, and various members of the Advisory Committee and the public did so.

Most of the staff work of the Commission was done by the Commission's Advisory Committee and its Drafting Committee (composed of members of the Commission and its Advisory Committee). The Advisory Committee members conducted a line-by-line review of the existing statute and guidelines. These committees developed recommendations for the Commission's consideration over a period of a year and a half.

Commission Procedure

From the information collected at the September 1981 informational meetings, the staff developed a proposed work program for the Commission. The issues were then referred to the Technical Committees for study.

Recommendations came from many sources: the first round of information meetings, members of the Commission and Technical Committees, and concerned citizens. Each issue or area of concern was first reviewed by the appropriate Technical Committee. The recommendation, if any, was then reviewed by the Co-Chairs Committee, which could modify, defer action, refer the recommendation to one or more Technical Committees to ensure a coordinated recommendation, or forwarded the recommendation to the Commission with its vote on the issue. Each Technical Committee had the option to put its original recommendations before the Commission unaltered by the Co-Chairs Committee or other committees.

The Commission then had several alternative courses of action including: return the recommendation to the committee of origin, to another Technical Committee, or to the Co-Chairs Committee; establish an ad hoc Technical Committee or subcommittee of Commission members to consider the recommendation; defer action or adopt or modify the recommended action.

The development of consensus took nearly a year and a half. On December 16, 1982, a draft bill and set of rules was unanimously approved. The draft recommendations were sent to hundreds of people on the Commission's mailing list. Public hearings were held on the proposed legislative and rule revisions during January 1983 in Spokane, Yakima, Olympia and Seattle.

During the beginning of the session, the Commission submitted its report to the legislature, as required, including a draft substitute bill which responded to public hearing comments (see the earlier sections in this report on SEPA's legislative history). After Governor Spellman signed SSB 3006, the Commission turned to the completion of its work, inviting any further comments on its draft rules before transmitting final proposed rules to the Department of Ecology. The Commission held its final meeting on June 20, 1983 and the final

draft of the proposed rules were unanimously endorsed, with some additional revisions, which were incorporated and transmitted to the Department of Ecology shortly thereafter. The bipartisanship of the Commission was demonstrated at Commission's final meeting, when Democratic and Republican legislators commended each other and, in particular, Chairman Bluechel's leadership of the Commission.

Building on the Consensus

While it would be an overstatement to suggest that there is complete unanimity of opinion about either SEPA or the Commission's recommendations throughout the state, the Commission's recommendations have produced an extraordinary consensus among citizens and organizations who have traditionally been at considerable odds over SEPA. In addition, the Commission truly functioned as a bipartisan body, which was also reflected in strong bipartisan leadership and majorities in both houses on the SEPA legislation.

The fact that representatives of the business community, the environmental community, and state and local agencies, each in a complex relationship within their communities and with one another, succeeded in sitting down and reasoning together for two years is a milestone for SEPA and, possibly, for the management of natural resources and the environment in Washington state.

The Commission profoundly hopes that both its process and its proposals will contribute to a better understanding of SEPA and to the ability of diverse groups to work together to resolve common environmental concerns.

SUMMARY OF COMMISSION MEETINGS

Meetings

The Commission held 17 regular meetings and 10 special meetings between August 1981 and July 1983. In addition, the Commission held four early sessions with the major groups concerned about SEPA (environmental and citizen groups, business and industry groups, state and local government officials), two meetings with its full Advisory Committee (one at the inception of its work and a second, 12 months later, on its overall recommendations), and four public hearings throughout the state on its recommendations. The Commission carried out each of its statutorily-mandated responsibilities (RCW 43.21C.202), and gave detailed review to the statute and its administrative rules. In addition, Commission subcommittees and Technical Committees held scores of meetings that led to the Commission deliberations summarized below.

All of the Commission meetings were open to the public, and Advisory Committee members and interested citizens participated in the discussions at the meetings.

Introductory Note

The following summary highlights the major subjects discussed at each meeting of the Commission. Nearly all of the subjects were discussed on the basis of the improvements that were needed, rather than whether the statute or rules would be the vehicle for the changes. The basic assumption, established at the February 18 meeting, was that improvements would be instituted through the rules, unless statutory amendment or authorization was viewed as necessary.

Certain statutory amendments were enacted to make it absolutely clear that the improvements in the recommended rules are authorized by the act.

For example, improvements to simplify the environmental process through the use of better environmental documents -- a new environmental checklist (197-11-1325), a mitigated DNS (197-11-340), a scoping notice (197-11-360 and 1360), adoption and supplemental environmental documents (197-11-640 through 660 and 1340), a documented decision including any mitigation measures (197-11-720(1)(b)), and so on -- were authorized by adding the phrase "and other environmental documents including but not limited to rules for timing of environmental review" to RCW 43.21C.110(1)(c). The existing guidelines and federal regulations currently include requirements for the preparation and use of other environmental documents, but it was felt that express statutory authorization would emphasize that the new rules regulate the entire SEPA process and not just the environmental impact statement (EISs) process.

Since SEPA and NEPA were enacted more than a decade ago, the administrative function of specifying the precise procedures, criteria, documents, and forms has generally been considered unnecessarily detailed for the statute. The important requirement of a "draft environmental impact statement", for exam-

ple, was established by rule, not by statute, and was subsequently supported by the courts.

Because the nature and timing of specific documents can be improved over time, the Department of Ecology should have sufficiently broad authority to make administrative improvements, in keeping with the act's policies, without statutory amendment. The ability to make the SEPA process work better by improving administrative rules has been a major theme of the Commission's work. This will lend greater stability and predictability to SEPA, a goal repeatedly recognized by the legislature and endorsed by major interest groups and concerned citizens.

Highlights of the Process

The topics discussed by the Commission members over a period of nearly two years are far too wide-ranging and complex to be reduced to a list or even to meeting summaries. Those familiar with SEPA know that a discussion of issues in one area is invariably related to many other areas.

A discussion of EISs on land use plans (or other "nonproject" proposals), for instance, tended to involve discussion of the usefulness of the document, the nature and role of alternatives, the timing of the process and use of phased review, the proper use of the statement for subsequent proposals, EIS format and incorporation by reference, public participation, and many other aspects of the SEPA process, from the planning through the implementation stage. Different Commissioners and Technical Committees approached the subject from different perspectives. The problems themselves usually involved a difficult judgment about which paperwork requirements will produce better environmental decisions. These abstract concepts then had to be translated into practical procedures for each part of the process. The procedures had to be readable and general enough to cover an extraordinarily diverse type of government activity, yet specific enough to provide adequate direction and, ultimately, produce useful documents.

The Commission process also involved substantial give-and-take to arrive at a consensus. In order to build consensus and focus the issues for the Commission, the recommendations formally presented at the Commission's meetings generally reflected a consensus of the diverse members of the Technical Committees (see the section of this report describing the Commission process). In addition, individual Commission and committee members suggested approaches and recommendations in the course of reviewing drafts and debating the texts. Hundreds of recommendations, from major changes to minor variations, were discussed over a two-year period. The Commission directed its drafting committee to ensure that the actual text of the proposed legislation and rules incorporated its recommendations and corresponded to its intent. The Commission's responsiveness to public comment is evident in the changes from initial to final drafts (for example, from SB 3006 to SSB 3006, or from the initial draft rules to the final proposed rules).

The Technical Committees of the advisory committees and the Commission tried to use a standard format to develop and present recommendations and focus debate. These documents are lengthy and available for inspection in the

Commission's archives; they indicate the major recommendations under consideration, although they generally do not provide a precise account of the discussions at each level of the Commission process. Even with utilizing legislative and agency staff assistance and voluntary contributions as much as possible, limited staff resources meant that the Commission's written products would be focused on four items: (1) proposed legislation (SSB 3006) and legislative history; (2) proposed rules (WAC 197-11) and general explanation of their intent; (3) an initial report (January 1983); and (4) a final report (June 1983).

These four items, consolidated in the final report, reflect a detailed study process and represent the most comprehensive study prepared on SEPA. They are also among the most detailed analyses prepared on our nation's environmental impact laws, whether of the federal government or of other states, and are being used as a model by other governmental bodies.

The list below tries to highlight for the reader the major subjects discussed at each Commission meeting.

1981

- August 4 organizational meeting
 presentation on SEPA case law by Charles Lean
- September 24 summary of issues identified by the four informational
 meetings with interest groups
 presentation on NEPA and federal rules by Kenneth S.
 Weiner
 presentation on SEPA guidelines by Charles Lean
 industry presentation on LEAFs by John Schneider,
 Chamber of Commerce
 presentation on local planning and SEPA by Tom
 Fitzpatrick
- November 4 Advisory Committee appointments
 city and county panels on SEPA use and experience
 Cities: Chuck Mize (AWC), Diane White (Bellevue), Kay
 Shoudy (Redmond), Bob Landles (Everett), Katie Mills
 (Tacoma), Jan Arntz (Seattle), Sam Jacobs (Kirkland)
 Counties: Jim Williams (WACo), Pat Lambert (Snohomish),
 Robert Hansen (Spokane), Tom Fitzpatrick (King), Sydney
 Glover (Island)

1982

- January 6 organizational matters
 Technical Committee co-chair reports
 special district panel (schools, PUDs, ports, Metro)
 on SEPA use and experience

February 18	RCW 43.21C.010-.030. SEPA-NEPA relationship lead agency
March 25	purpose of rules right to a healthful environment indirect impacts descriptive environmental checklist school closure, EFSEC exemptions agency staff competence and certification; DOE workshops and handbook
April 20	environmental checklist flexible thresholds for minor new construction EFSEC
May 19	environmental checklist categorical exemptions and school closures lead agency "socioeconomic" impacts
June 9	scoping threshold determinations, including proposed and mitigated DNSs
July 15	threshold determinations "socioeconomic" impacts forest practices exemption
July 27	scoping forest practices exemption
August 26	threshold determinations nonproject proposals forms appeals
September 21	nonproject proposals consultation and commenting environmentally sensitive areas EFSEC substantive authority and mitigation
September 30	substantive authority and mitigation agency SEPA policies and procedures functional equivalence integration, coordinating permit procedures scope, content, timing of environmental review EIS format use of existing documents and supplements appeals

November 30 attorneys fees
 drafting committee report on recommended rules
 and statutory changes, including format,
 definitions, etc.
 rulemaking authority
 public hearings on recommendations

December 13 approval of draft bill and rule recommendations

1983

June 20 approval of proposed rules and content of final report

OTHER COMMISSION PUBLIC MEETINGS AND HEARINGS

1981

September 1 Information meeting with state agencies
 September 2 Informational meeting with environmental groups
 September 3 Informational meeting with development community
 September 4 Informational meeting with local government

1981

December 1 Full Advisory Committee meeting and panel discussion from
 different interest group perspectives on SEPA

1982

December 16 Full Advisory Committee meeting on Commission
 recommendations

1983

January 5 Public hearing in Seattle at Port of Seattle
 January 6 Public hearing in Olympia at Public Lands Building
 January 18 Public hearing in Yakima at County Courthouse
 January 25 Public hearing in Spokane at Public Health Center

This list does not include well over 100 meetings by the five Technical Committees of the Commission's Advisory Committee (each of which had numerous subcommittees), the Advisory Committee's Co-Chair Committee, the Commission's Drafting Committee, and Commission Ad Hoc Committees assigned to specific issues.

