



TO: Jeffrey Goltz, Chairman
Patrick Oshie, Commissioner
Philip Jones, Commissioner

FROM: Vicki Elliott, Policy Specialist

DATE: May 13, 2010

SUBJECT: Docket No. TV-100766
Program-wide SEPA Review
Common Carriers of Hazardous Materials

The purpose of this memorandum is to inform you of a change staff will make in the way it conducts State Environmental Policy Act (SEPA) reviews for common carriers of hazardous materials.

Background

In 1971, the state legislature passed Chapter 43.21C RCW, the State Environmental Policy Act (SEPA). In 1984, the Department of Ecology (DOE) adopted rules in WAC 197-11 that established uniform requirements for compliance with SEPA. Specifically, WAC 197-11-865 requires the UTC to conduct a SEPA review for issuing "... common carrier motor freight authority ... that would authorize ... transportation service in the field of petroleum and petroleum products in bulk, ... radioactive substances, explosives, or corrosives." We call these products hazardous materials.

In 1984, the UTC fully regulated hazardous materials carriers. The UTC had a full staff of almost 100 FTE in the Motor Carrier program, with the resources and expertise to issue permits, monitor insurance, conduct safety reviews and vehicle inspections at the carrier's place of business, inspect vehicles and cargo safety at Ports of Entry and at the roadside, conduct enforcement proceedings, and set rates, routes, and conditions for transportation. In the 1990's, federal preemption prohibited the UTC from prescribing rates, routes, or conditions. Subsequently, the Legislature transferred safety oversight of all common carriage, including hazardous materials, to the Washington State Patrol (WSP). The UTC's Motor Carrier staff has been reduced to seven FTEs. The UTC's current role in hazardous materials transportation is limited to issuing permits and monitoring insurance. DOE's requirement that the UTC conduct a SEPA review for hazardous materials transportation remains.

Today, the environmental impacts which a SEPA review might otherwise investigate are specifically addressed in great detail by means of prescriptive state and federal legislation and/or rules. For example, the federal Environmental Protection Agency, in 40 CFR, prescribes standards for emissions of carbon monoxide, hydrocarbon, nitrogen oxide, and particulate matter from heavy duty trucks. Any vehicles owned or operated by an applicant for a UTC common carrier hazardous material permit must meet those standards.

Likewise, the Federal Motor Carrier Safety Administration, in 49 CFR, prescribes noise control standards for heavy duty trucks operating in interstate transportation, and the Washington State Patrol has adopted those same standards, in WAC 446, for intrastate transportation.

Finally, there are three primary measures in place designed to reduce, control, or mitigate a potential hazardous materials spill:

- The Federal Motor Carrier Safety Administration has adopted, in 49 CFR, specific requirements for interstate hazardous materials transportation designed to ensure the safety of the load, the vehicle, the driver, and the public; the Washington State Patrol has adopted these same requirements for intrastate haulers in WAC 446, which carriers with a common carrier permit issued by the UTC must meet.
- Hazardous materials haulers are required to have a level of liability insurance higher than that of general freight haulers (see WAC 480-14-250). (General freight haulers must have \$750,000 in liability insurance. Hazardous materials haulers must have \$5,000,000 in liability insurance (except for limited exceptions such as non-combustible oil)).
- RCW 70.136 authorizes each public agency in the state to designate a “hazardous material incident command agency” which has the equipment, personnel and expertise to handle a hazardous materials spill. If the public agency makes no such designation, the Washington State Patrol assumes that responsibility. Each designated incident command agency is listed with the state. In effect, a team is created consisting of each Hazardous Materials Incident Command List designee as required by RCW 70.136.030. The team also includes the SERC Hazardous Materials Response Team, responsible for responding to spills within their region. The State Patrol coordinates these two entities to effectively respond to spills throughout the state.

The program-wide SEPA review is a viable alternative to conducting individual SEPA reviews because it will decrease the average processing time considerably. Under the program-wide review, staff will process a complete and accurate application within one week, compared to the current processing time of 4.5 months. Applicants will receive their operating authority generally within two weeks, provided the application is complete and accurate. The applicant can start business as soon as he/she receives the operating authority instead of waiting for months to begin operations.

Program-wide SEPA Review Process

We have attached a copy of the program-wide SEPA review. The review includes an analysis of the possible impacts or mitigations on a number of environmental elements, such as the earth, air, and water. For many of these elements, the factors that DOE requires UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (*i.e.*, county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of these environmental elements.

However, we do address four ways in which hazardous materials transportation may affect the environment. Increased hazardous materials transportation may increase air emissions, noise emissions, the possibility of a hazardous materials spill, and the public services required to respond to such a spill. The attached review describes, in #2, #7, and #15, how this possibility increases and processes and procedures that are in place that would reduce or mitigate the impact.

Conclusion

Based on the information above, we will apply this SEPA program review to common carrier of hazardous materials applications received as of May 1, 2010.

PROGRAM-WIDE SEPA REVIEW

COMMON CARRIER HAZARDOUS MATERIALS PERMITS

Agency: Utilities and Transportation Commission (UTC)

Date: May 13, 2010

Determination of the Impact on Environmental Elements

Environmental Element	DOE description of the factors to consider	UTC Determination	Reason for UTC Determination
1. Earth	<ul style="list-style-type: none"> a. General description of the site (flat, rolling, hilly, steep, mountainous, other). b. The steepest slope on the site. c. General types of soils found on the site (clay, sand, gravel, peat, muck), including the classification of agricultural soils and any prime farmland, if known. d. Description of any surface indications or history of unstable soils in the immediate vicinity. e. Purpose, type, and approximate quantities of any filling or grading proposed and the source of the fill. f. Description of any erosion that could occur as the result of clearing, construction, or use. g. The percentage of the site that will be covered with impervious surfaces after project construction (i.e., asphalt or buildings). h. Proposed measures to reduce or control erosion or other impacts to the earth, if any. 	No assessment required	The factors that DOE requires UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Earth.
2. Air	<ul style="list-style-type: none"> a. The type of air emissions that would result during construction and once completed and the approximate quantities, if known. Types of emissions include dust, automobile, odors, and industrial wood smoke. 	No adverse impact	<ul style="list-style-type: none"> a. UTC has no role in assessing air emissions that result during construction or once completed. This refers to the site on which a building or other structure is built. All construction projects require a building permit from the local

Environmental Element	DOE description of the factors to consider	UTC Determination	Reason for UTC Determination
	<ul style="list-style-type: none"> b. Any offsite sources of emissions or odors that may affect granting the application. c. Proposed measures to reduce or control emissions or other impacts to air, if any. 		<p>jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of air emissions.</p> <ul style="list-style-type: none"> b. Presumably, granting an application for transportation of hazardous materials will increase the number of commercial vehicles and the number of trips those commercial vehicles make. Any increase in commercial vehicle traffic will increase vehicle emissions released into the air. The Environmental Protection Agency (EPA) has mandatory standards for emission control for commercial vehicles (see 40 CFR Part 86, Subpart D, and Subpart N). Since any vehicles owned by applicants for a permit must meet EPA standards, we do not believe that any increased emissions would affect granting the application. c. In order to reduce or control emissions, applicants are required to meet EPA standards for emissions. The EPA, in 40 CFR Part 86, Subpart D, and Subpart N, sets regulations for the control of emissions for gasoline and diesel-fueled heavy duty trucks and commercial buses. This includes acceptable emission levels for carbon monoxide, hydrocarbon, nitrogen oxide, and particulate matter.
3. Water	<ul style="list-style-type: none"> a. (1) The type and names of any surface water body on or in the immediate vicinity of the site, including what stream or river it flows 	No assessment required	The factors that DOE requires UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or

Environmental Element	DOE description of the factors to consider	UTC Determination	Reason for UTC Determination
	<p>into.</p> <p>(2) Describe and attach available plans if the project will require any work over, in, or within 200 feet of the surface water.</p> <p>(3) The amount of fill and dredge material that would be placed in or removed from the surface water, the area of the site that would be affected, and the source of fill.</p> <p>(4) General description, purpose, and approximate quantities of any surface water withdrawals or diversions.</p> <p>(5) If the proposal lies within a 100-year flood plain, then the location.</p> <p>(6) Describe the type of waste and anticipated volume of waste, if any, that will be discharged to surface waters.</p> <p>b. (1) General description, purpose, and approximate quantities, if known, if any ground water that will be withdrawn or be discharged to ground water.</p> <p>(2) Describe any waste material that will be discharged into the ground from septic tanks or other sources, if any, and describe the general size of the system, the number of systems, the number of houses to be served, or the number of animals or humans the systems are expected to serve.</p> <p>c. (1) Describe the source of water runoff, including storm water, and method of collection and disposal, if any. Include quantities, if known, where the water will</p>		<p>other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Water.</p>

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	<p>flow, and whether and how runoff will flow into other waters. (2) Describe how waste materials may enter ground or surface water.</p> <p>d. Describe any proposed measures to reduce or control surface, ground, and runoff waster impacts, if any.</p>		
4. Plants	<p>a. Determine whether the vegetation on the site includes:</p> <ul style="list-style-type: none"> • Deciduous trees (alder, maple aspen, other) • Evergreen trees (fir, cedar, pine, other) • Shrubs, grasses, or pasture • Crop or grain • Wet soil plants (cattail, buttercup, bulrush, skunk cabbage, other) • Water plants (water lily, eelgrass, milfoil, other) • Other types of vegetation <p>b. Describe what kind of vegetation will be removed or altered.</p> <p>c. List threatened or endangered species known to be on or near the site.</p> <p>d. Describe any proposed landscaping, use of native plants, or other measures to preserve or enhance the vegetation on the site.</p>	No assessment required	The factors that DOE requires UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Plants.
5. Animals	<p>a. List any birds and animals that have been observed on or near the site or are known to be on or near the site, including:</p> <ul style="list-style-type: none"> • Birds (hawk, heron, eagle, songbirds, other) • Mammals (deer, bear, elk, beaver, other) 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the

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	<ul style="list-style-type: none"> • Fish (bass, salmon, trout, herring, shellfish, other) b. List any threatened or endangered species know to be on or near the site. c. Explain if the site is part of a migration route. d. Describe any proposed measures to preserve or enhance wildlife, if any. 		lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Animals.
6. Energy and Natural Resources	<ul style="list-style-type: none"> a. Describe what kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project’s energy needs and for what it will be used for (heating, manufacturing, or other). b. Describe how the proposed project would affect the potential use of solar energy by adjacent properties, if applicable. c. Describe any energy conservation features included in the plans of the proposal, or any proposed measures to reduce or control energy impacts. 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Energy and Natural Resources.
7. Environmental Health	<ul style="list-style-type: none"> a. Describe any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of the proposal. <ul style="list-style-type: none"> (1) Describe special emergency services that might be required. (2) Describe any proposed measures designed to reduce or control environmental health hazards. b. (1) Describe the types of noise that exists in the area which may affect your project 	No adverse impact	<ul style="list-style-type: none"> a. The applicants in this case are applying to transport hazardous materials throughout the state of Washington, generally by semi or tanker truck. By the very nature of the work, there is a risk of an accident that results in a hazardous materials spill. <ul style="list-style-type: none"> (1) Special emergency services may include police, fire, paramedics, and the appropriate state or local hazardous materials spill response team members. (2) There are three primary measures in place designed to reduce, control, or mitigate a hazardous materials spill.

Environmental Element	DOE description of the factors to consider	UTC Determination	Reason for UTC Determination
	<p>(traffic, equipment, operation, other). (2) Describe the types and levels of noise that would be created or associated with the project on a short-term or long-term basis (traffic, equipment, operation, other). Indicate what hours noise would come from the site.</p> <p>(3) Describe any proposed measures to reduce or control noise impacts.</p>		<ul style="list-style-type: none"> • First, the Federal Motor Carrier Safety Administration has adopted, on an interstate level, specific requirements for hazardous materials haulers designed to ensure the safety of the load, the vehicle, the driver, and the public (see 49 CFR, Part 397). The Washington State Patrol has adopted these same requirements for intrastate haulers (see WAC 446-65-010). • Second, hazardous materials haulers are required to have a level of liability insurance higher than that of general freight haulers (see WAC 480-14-250). General freight haulers must have \$750,000 in liability insurance. Hazardous materials haulers must have \$5,000,000 in liability insurance (except for limited exceptions such as non-combustible oil). • Third, the state of Washington has a hazardous materials spill response team ready to respond quickly and effectively to any reported spill. The team is comprised of the Hazardous Materials Incident Command List appointee for each entity as required by RCW 70.136.030. The team also includes the SERC Hazardous Materials Response Team, responsible for responding to spills within their region. The State Patrol coordinates these two entities to help respond to spills throughout the state.

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			<p>b. (1) The UTC has no role in assessing noise levels during construction of a project. This refers to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of air emissions during construction.</p> <p>(2) Presumably, granting an application for transportation services will increase the number of commercial vehicles and the number of trips those commercial vehicles make. Any increase in commercial vehicle traffic will increase levels of noise in the area, presumably on a long-term basis. Noise is likely to increase due to increased commercial vehicle traffic at all hours of the day and night. The Federal Motor Carrier Safety Administration (FMCSA) has mandatory standards for allowable noise levels for commercial vehicles operated interstate (see 49 CFR Part 325). The Washington State Patrol (WSP) has adopted these same mandatory standards for allowable noise levels for commercial vehicles operated intrastate (see WAC 446-65-010). Because any vehicles owned by applicants for a permit must meet FMCSA</p>

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			<p>and WSP standards, we do not believe that any increased noise would affect granting the application.</p> <p>(3) In order to reduce or control noise impacts, applicants are required to meet FMCSA standards for noise levels for interstate operations. The FMCSA, in 49 CFR Part 325, sets regulations for the control of noise levels. In addition, applicants are required to meet these same standards, as required by WSP, for noise levels for intrastate operations (see WAC 446-65-010).</p>
8. Land and Shoreline Use	<ul style="list-style-type: none"> a. Describe the current use of the site and adjacent properties. b. Describe any past agricultural use of the site. c. Describe any structures on the site. d. Explain if any structures will be demolished. e. Explain the current zoning classification of the site. f. Explain the current comprehensive plan designation of the site. g. Explain the current shoreline master program designation of the site, if any. h. Explain if, and why, any part of the site has been classified as an “environmentally sensitive” area. i. List how many people would reside in, or work in, the completed project. j. Describe any proposed measures to avoid or reduce displacement impacts. k. Describe any proposed measures to ensure 	No assessment required	<p>The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Land and Shoreline Use.</p>

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	the proposal is compatible with existing and projected land uses and plans.		
9. Housing	<ul style="list-style-type: none"> a. List how many units would be provided and indicate whether each would be high, middle, or low-income housing. b. List how many units would be eliminated and indicate whether each would be high, middle, or low-income housing. c. Describe any proposed measures to avoid or reduce housing impacts. 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Housing.
10. Aesthetics	<ul style="list-style-type: none"> a. List the tallest height of any proposed structures, not including antennas. Describe the proposed principle exterior building material. b. Describe any views in the immediate vicinity that would be altered or obstructed. c. Describe any proposed measures to reduce or control aesthetic impacts. 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Aesthetics.
11. Light and Glare	<ul style="list-style-type: none"> a. Describe the type of light or glare that the proposal will produce, including the time of day it would mainly occur. b. Explain whether light or glare from the finished project could be a safety hazard or interfere with views. 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the

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	<ul style="list-style-type: none"> c. Describe any existing off-site sources of light or glare that may affect the proposal. d. Describe any proposed measures to reduce or control light or glare. 		<p>lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Light and Glare.</p>
12. Recreation	<ul style="list-style-type: none"> a. Describe any designated and informal recreational opportunities in the immediate vicinity. b. Explain how the proposed project would displace any existing recreational uses. c. Describe any proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant. 	No assessment required	<p>The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Recreation.</p>
13. Historic and Cultural Preservation	<ul style="list-style-type: none"> a. Describe any place or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site. b. Describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site. 	No assessment required	<p>The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Historic and Cultural Preservation.</p>

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14. Transportation	<ul style="list-style-type: none"> a. Identify public streets and highways serving the site, and describe any proposed access to the existing street system. Indicate on site plans. b. Explain if the site is current served by public transit and, if not, indicate the approximate distance to the nearest transit stop. c. List how many parking spaces the completed project would have, and how many the project would eliminate. d. Describe if and how the proposal will require any new roads or streets, or improvements to existing roads or streets, not including driveways. e. Indicate whether and how the project will use, or occur in the immediate vicinity of, water, rail, or air transportation. f. Indicate how many vehicle trips per day would be generated by the completed project and when peak volumes would occur. g. Describe any proposed measures to reduce or control transportation impacts. 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Transportation.
15. Public Services	<ul style="list-style-type: none"> a. Explain if the project would result in an increased need for public services such as fire protection, police protection, health care, schools, or other. b. Describe any proposed measures to reduce or control direct impacts on public services. 	No adverse impact	Granting an application for transportation of hazardous materials does not result in an increased need for public services. It may be that, in the case of a hazardous materials spill, increased public services are needed. That scenario is described in Factor 7, Environmental Health, above.
16. Utilities	<ul style="list-style-type: none"> a. List utilities currently available at the site, including electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, or other. b. Describe the utilities proposed for the project, the utility providing the service, and 	No assessment required	The factors that DOE requires the UTC to consider in making a determination of the impact of granting an application refer to the site on which a building or other structure is built. All construction projects require a building permit from the local jurisdiction (i.e., county). In that case, the county becomes the

Environmental Element	DOE description of the factors to consider	UTC Determination	Reason for UTC Determination
	the general construction activities on the site or in the immediate vicinity which might be needed.		lead agency and is required to complete a SEPA review for the entire project. The local agency may request that the UTC participate in the review in some way. The UTC is prepared to assist the local agency if requested. Absent such a request, the UTC has no role in assessing the impact of the environmental element Utilities.