

CHAPTER 6

THE DCEPA PROCESS



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THE DCEPA PROCESS

The District of Columbia Environmental Policy Act (DCEPA) was enacted in 1989. In 1997, the “Rules to Implement the District of Columbia Environmental Policy Act of 1989” were published. These rules are included in Chapter 72, Environmental Policy Act Regulations, of Title 20, District of Columbia Municipal Regulations (DCMR), (Environment). The DCEPA and Rules to Implement DCEPA are given in the next sections of this chapter.

DCEPA applies to all District of Columbia Department of Transportation (DDOT) projects. Most of the DDOT projects use federal funds and have to comply with the National Environmental Policy Act (NEPA). DCEPA provides an exemption for projects that comply with NEPA and considers NEPA action to be equivalent to preparing a DCEPA action. Therefore, DDOT projects that comply with NEPA (Categorical Exclusion [CE], Environmental Assessment [EA], or Environmental

Impact Statement [EIS]) do not need to take any additional action to comply with DCEPA.

DDOT projects that use local funds and do not require any federal agency action have to follow the DCEPA. After the DDOT determines the appropriate action type for its proposed project, the development of the subsequent environmental document (Exemption, Environmental Impact Screening Form [EISF], or Environmental Impact Statement [EIS]) follows a review and approval process prescribed by the District of Columbia environmental regulations.

As with NEPA, the complexity of the process to gain approval for an Exemption action type is less than for an EIS action type. This section explains the individual steps in the DCEPA process.

6.1 District of Columbia Environmental Policy Act

The text of DCEPA is provided below for reference.

D.C. LAW 8-36

“District of Columbia Environmental Policy Act of 1989”

July 27, 1989

To require the Mayor or any District of Columbia board, commission, authority, or person to prepare an environmental impact statement if the Mayor, board, commission, authority, or person proposes or approves an action that, if implemented, is likely to have a significant effect on the quality of the environment; to ensure the residents of the District of Columbia safe, healthful, productive, and aesthetically pleasing surroundings; and to develop a policy to ensure that economic, technical, and population growth occurs in an environmentally sound manner.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District of Columbia Environmental Policy Act of 1989”.

Sec. 2. Purpose.

The purpose of this act is to promote the health, safety and welfare of District of Columbia (“District”) residents, to afford the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and privately initiated actions be examined before implementation and to require the Mayor, board, commission, or authority

to substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating measures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects.

Sec. 3. Definitions.

For the purposes of this act, the term:

- (1) “Action” means (i) a new project or activity directly undertaken by the Mayor or a board, Commission, or authority of the District government or (ii) a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government.*
- (2) “Major action” means any action that costs over 1 million dollars and that may have a significant impact on the environment, except that, subject to the exemptions in section 7, the Mayor, pursuant to rules issued in accordance with section 10, shall classify any action that costs less than 1 million dollars as a major action, if the action imminently and substantially affects the public health, safety, or welfare. The cost level of 1 million dollars shall be based on 1989 dollars adjusted annually according to the Consumer Price Index.*
- (3) “Environment” means the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora and fauna.*
- (4) “Hazardous substance” means any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical,*

or infectious characteristic, as established by the Mayor, may:

(A) Cause or significantly contribute to an increase in mortality or an increase in a serious, irreversible or incapacitating reversible illness; or (B) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that generate pressure through decomposition, heat, or other means and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

- (5) *“Lead agency” means the District agency designated by the Mayor to have primary responsibility for the preparation of an Environmental Impact Statement (EIS).*
- (6) *“Functional equivalent” means the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record.*

6.2 DCEPA Action Types

There are three types of actions under DCEPA.

1. Exemption (provided in 20 DCMR 7202) – Actions for which no EISF or EIS is required. A list of actions is provided in 72 DCMR 7202 for the

projects that do not require the preparation of an EISF or an EIS.

2. Preparation of an EISF (in 20 DCMR 7201) – Major Actions for which EISF is required. A list of actions is provided in 20 DCMR 7201 for the projects that require the preparation of an EISF.
3. Preparation of an EIS – Projects that do not qualify for an exemption, or projects for which an EISF was submitted and the lead agency concluded that an EIS is required, will have to prepare an EIS.

6.3 Exemption: Actions for which No EISF or EIS Is Required

The 1997 rule making for DCEPA elaborated on the list of actions that were exempt from preparing an EISF or EIS for DCEPA compliance. This list of actions is provided in 20 DCMR Section 7202 as the “The Actions for which an EISF or EIS is Not required.” This list is included below.

- (a) *Any action that costs less than 1 million dollars (\$1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, unless that action meets the criteria of § 7201.3 and 7201.4 of these rules;*
- (b) *Any action for which an Environmental Impact statement (“EIS”) has been prepared in accordance with the National Environmental Policy Act of 1969, approved January 1, 1970 (83 Stat.852; 42 U.S.C. § 4321 et seq.) (NEPA) and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that no impact statement is*

required due to a finding of no significant impact or a finding that the proposed action is categorically excluded from consideration;

- (c) Any action for which a request has been made for the authorization or allocation of funding that involves only a feasibility or a planning study for a possible future action that has not been approved, adopted or funded. The study, however, shall include consideration of environmental factors;*
- (d) Any action whose impact on the environment has been or is considered in the functional equivalent of an EIS, where equivalency is determined by the lead agency;*
- (e) Any action that reached a critical stage of completion prior to October 18, 1989, and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;*
- (f) Any action of an environmentally protective regulatory nature;*
- (g) Any action within the Central Employment Area as defined in the zoning Regulations of the District of Columbia; and*
- (h) Any action for which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.*

7202.2 *In addition to the actions listed in § 7202.1, no agency shall require that an EISF or EIS be prepared for the following classes of actions:*

- (a) Class 1. Operation, repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, including replacement of roofs, HVAC, electrical, plumbing, elevator, sprinkler or other systems, plus interior work to common areas and individual units, involving negligible or no expansion of use beyond that previously existing;*
- (b) Class 2. Replacement, renovation, or reconstruction of existing structures and facilities, where the new or renovated structure meets the requirements of the Zoning Regulations, is located on the same site as the structure replaced, renovated, or reconstructed, will have substantially the same purpose and capacity as the structure replaced, renovated, or reconstructed, and will not exceed the density of that structure;*
- (c) Class 3. Construction and location of limited numbers of small facilities or structures; installation of new equipment in small structures, including replacement of HVAC, electrical, plumbing, elevator, sprinkler or other systems; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This class includes, but is not limited to:*
 - (1) Single family residences not in conjunction with the building of two or more such units;*
 - (2) Small commercial structures not involving the use of significant amounts of hazardous substances;*
 - (3) Water main, sewage, electrical, and other utility extensions of reasonable length to serve such construction; and*
 - (4) Accessory structures such as garages, patios, swimming pools, and fences;*

- (d) *Class 4. Minor public or private alterations in the condition of land, water, or vegetation which do not involve the removal of mature, healthy trees. This class includes, but is not limited to:*
- (1) *Grading on land with a slope of less than ten percent (10%), except in waterways, wetlands, or officially designated scenic areas;*
 - (2) *New gardening, landscaping or planting of trees or other vegetation;*
 - (3) *Temporary use of land having negligible permanent effects, such as carnivals, fairs, and sales of Christmas trees; and*
 - (4) *The creation of bicycle lanes on existing rights-of-way;*
- (e) *Class 5. Minor alterations in land use limitation in areas with an average slope of less than twenty percent (20%), which do not result in any changes in land use or density. This class includes, but is not limited to:*
- (1) *Minor lot line adjustments, side yard and set back variances; and*
 - (2) *Issuance of minor encroachment permits;*
- (f) *Class 6. Actions taken by District agencies as authorized by law or regulation to assure the maintenance, restoration, or enhancement of a natural resource or the environment, where the regulatory process involves procedures for protection of the environment. This includes basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to the environment and activities limited entirely to*
- inspections to check for performance of an operation, or the quality, health or safety of a project;*
- (g) *Class 7. Construction or placement of minor structures accessory to existing commercial, industrial, or institutional facilities. This class includes, but is not limited to:*
- (1) *On-premise signs;*
 - (2) *Small parking lots (fewer than 50 vehicles); and;*
 - (3) *Placement of seasonal or temporary use items such as mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use;*
- (h) *Class 8. Action in the nature of a response to an emergency as determined by the Mayor;*
- (i) *Class 9. Action in the nature of remedial actions related to leaking underground storage tanks, removal of PCB equipment, hazardous substances, or other environmental contaminants pursuant to all lawfully required and issued permits;*
- (j) *Class 10. Actions related to the removal of asbestos pursuant to all lawfully required and issued permits;*
- (k) *Class 11. Residential structure projects, or portions of projects, within the R-1 through R-5-A zoning districts, as defined under Chapters 2 and 3 of Title 11, DCMR (Zoning);*
- (l) *Class 12. Actions within Development Zones as defined pursuant to the District of Columbia Economic Development Zone Incentives Act of 1988 (D.C. Law 7-177).*

20 DCMR 7299 “Definitions” defines Public Structure as “any government-owned building, roadway, bridge, alley, sidewalk, curb, gutter, or utility, including structures and equipment related to the pumping or distribution of water, sanitary sewage, storm water, or combination of storm water and sanitary sewage.” This means that most of the DDOT projects and infrastructure is covered under the definition of Public Structures. Therefore DDOT projects can use the exemption for actions listed in the above mentioned section that deal with Public Structure. Hence, all DDOT projects (including reconstruction, maintenance, rehabilitation, and minor, limited construction), except new large construction projects, are provided an exemption under DCEPA regulations.

Project Development and Environment (PDE) Division staff (or designee) make the determination regarding whether a project qualifies as an exemption or not.

6.4 EISF: Actions for which an EISF Is Required

Actions that are not covered in the exemption listed in the above section (20 DCMR 7202) need to prepare an EISF to determine whether an EIS is required or not. The 1997 rule making for DCEPA elaborated the list of actions for which an EISF is required. This list is provided in 20 DCMR Section 7201. The EISF form is available in Appendix C. The EISF form has to be completed by the applicant and submitted to the Department of Consumer and Regulatory Affairs (DCRA) for approval. The EISF has to be reviewed and approved by PDE Division (or designee) before it is submitted to DCRA.

6.5 EIS: Actions for which an EIS Is Required

Actions that are not covered in the exemption listed in the above section (20 DCMR 7202), are not covered in the EISF section (20 DCMR 7201), or projects for which the lead agency has made a determination that an EIS is required shall prepare an EIS. The PDE staff (or designee) makes the determination regarding whether an EIS is required or not when an action does not qualify for an exemption or an EISF. However, if an EISF has been submitted to DCRA and DCRA determines that an EIS is needed, then an EIS has to be prepared by closely coordinating with the designated PDE Division staff (or designee). The EIS has to be reviewed and approved by the PDE Division (or designee) before it is submitted to DCRA.

6.5.1 Content of an EIS

The guidance for preparing an EIS is available in 20 DCMR 7206, 7208, 7209, and 7210. The EIS is required to include the following information, description, and analysis.

- (a) *The goals and nature of the proposed major action and its environment;*
- (b) *The relationship of the proposed major action to the goals of the adopted comprehensive Plan, requirements as promulgated by the Zoning Commission, and any District or federal environmental standards;*
- (c) *Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;*

- (d) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;*
- (e) Any irreversible or irretrievable, commitment of resources involved in the implementation of the proposed major action;*
- (f) Mitigation measures proposed to minimize any adverse environmental impact;*
- (g) The impact of the proposed major action on the use of energy resources, if applicable and significant;*
- (h) The cumulative impact of the major action when considered in conjunction with other proposed actions;*
- (i) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;*
- (j) Responses to comments on the EIS provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and*
- (k) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.*

6.5.2 Public and Agency Review

The EIS must be provided for agency and public comment. The lead agency is required to publish a notice of availability (NOA) for the EIS in the District

of Columbia Register. The public comment period has to be a minimum of 45 days. After the EIS is released, at least one public hearing is required within 45 calendar days of any request made during the public comment period by 25 registered voters in a single member district or if there is significant public interest in the action that is the subject of the EIS.

6.5.3 Findings of an EIS

The lead agency is responsible for developing the written findings of an EIS that takes into account written and oral public comments and the responses to those comments. An EIS will do one of the following.

- Identify no adverse effect
- Identify an adverse effect, but the public health, safety, or welfare is not imminently and substantially endangered
- Identify an adverse effect, and the public health, safety, or welfare is imminently and substantially endangered

These findings must be prepared within 30 working days after completion of a public hearing or the close of the public comment period. These findings must be published in the District of Columbia Register.

If the findings identify adverse affects and that the public health, safety, or welfare is imminently and substantially endangered, the lead agency shall disapprove the project unless the lead agency or applicant submits mitigating measures or substitutes a reasonable alternative to avoid the danger.

If the findings identify no adverse effect, or identify an adverse effect and the public health safety or welfare is not imminently and substantially endangered, the proposed action shall be approved with respect to the requirements of Law B-36.

6.6 Determining DCEPA Action Type

For locally funded projects where no federal action is required, the first step in order to identify the appropriate DCEPA action is to check whether that project qualifies as an exemption provided in 72 DCMR 7202, Actions for which No EISF or EIS is Required. The list of actions from 72 DCMR 7202 is provided in the “Exemption” section of this chapter. If the project qualifies for an exemption, then it should be documented in the DDOT Environmental Evaluation Form, and the DCEPA process is considered complete. At the time of construction, this exemption should be identified in the Environmental Intake Form (EIF) submitted to DCRA.

If the project does not qualify for an exemption, then an EISF should be prepared and submitted to DCRA. If DCRA accepts the EISF and approves the project based on the EISF, then the DCEPA process is considered complete.

If the project does not qualify for an exemption, is not covered in the EISF section (20 DCMR 7201), or the lead agency (or DCRA) has made a determination that an EIS is required, then an EIS must be prepared.

6.7 Additional Information

Code of Federal Regulations, Title 23, Volume 1, Part 771 Environmental Impact and Related Procedures
[Revised as of April 1, 1999]

http://www.gpo.gov/nara/cfr/waisidx_99/23cfr771_99.html