

State Funded Local Projects

National Environmental Policy Act (NEPA) vs Wisconsin Environmental Policy Act (WEPA)

(It is assumed some local funding will be included in the project)

Background

Trans 400, Wis. Admin. Code is the Department's implementation vehicle for the requirements of the Wisconsin Environmental Policy Act (WEPA). If the subject project is State funded, regardless of whether or not there is federal funding or a Federal (NEPA) action, Trans 400, Wis. Adm. Code applies.

Some examples of typical Federal actions or undertaking (permits, approvals or funding) that occur on transportation projects include;

- Section 404 permit coverage – Army Corp of Engineers (Corp Permit)
- USDA Rural Development Grants for Water & Sewer construction
- Coast Guard Permit
- FHWA funding, permit or approval (IH, NHS)
- Section 6(f) National Park Service land conversion approval
- Conversion of USDA Conservation Easement Lands (various programs including wetlands)

When and Where Does NEPA Apply?

NEPA applies whenever a proposed activity or action;

- is proposed on federal lands, or
- requires passage across federal lands, or
- will be funded in part or in whole by federal money, or
- will affect the air or water quality that is regulated by federal law

When any one of these four conditions are present, the federal agency with the greatest expertise, regulatory authority and capacity to manage the NEPA process for the proposed project becomes the Lead Agency for that project. The federal agencies that most often take the lead role in a NEPA process are one of the following:

- Environmental Protection Agency (EPA)
- Forest Service (USFS)
- Corps of Engineers (COE)
- National Parks Service
- Federal Highway Administration (FHWA)
- Department of Defense (DOD)
- Department of Energy (DOE)
- Bureau of Land Management (BLM)
- Department of Agriculture (USDA)
- Bureau of Indian Affairs (BIA)

Any of these federal agencies that has regulatory jurisdiction in the geographic area or over the potentially affected resources can be considered for the NEPA lead agency role by the Council on Environmental Quality (CEQ).

The CEQ gives the Lead Agency a great deal of administrative responsibility in that the Lead must;

- provide a single point of contact for the public, and
- coordinate with all other local, state and federal agencies with jurisdiction in the project area

Lead agencies are responsible for making the NEPA process go efficiently and be as responsive as possible to public questions and concerns.

Appropriate environmental document type (NEPA vs. WEPA)

- Environmental documentation is still normally required per Trans 400, Wis. Admin. Code.
- Trans 400, Wis. Admin. Code must be reviewed to determine the applicable environmental document under Trans 400, Wis. Admin. Code whenever there is state funding used for any portion of the project.
- Anytime there is State funding and/or Federal (FHWA) funding being used on the project, the most restrictive document required must be prepared when comparing Trans 400, Wis. Admin. Code and 23 CFR 771 (FHWA Undertaking Only).
- When it is determined that there will be a Federal Action (examples noted above), the environmental impact and related procedures of the identified Federal Lead agency for the undertaking will apply and be compared to the environmental documentation requirement of Trans 400, Wis. Admin. Code. Again, the most restrictive document required must be prepared.
- Currently, Categorical Exclusion Checklist (CEC) environmental documents can only be used on very limited group WEPA project types.
- Programmatic Categorical Exclusion (PCE)* and Environmental Report (ER) environmental documents are the “typical” environmental document when projects have any State funding, per Trans 400, Wis. Adm. Code.

*Formerly known as Programmatic Environmental Report (pER)

SPECIAL NOTE:

- **If NO FHWA project funding or approvals, Section 4(f) determination is not required.**