

CEQA and Solid Waste Facility Permit Consistency

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California Environmental Review and Solid Waste Facility Permit Process

For a project subject to CEQA, State law requires evidence of compliance with the CEQA through the preparation, circulation, and adoption/certification of an environmental document prior to project approval.

CalRecycle staff must analyze and evaluate whether the environmental document clearly describes all phases of a proposed project. For an environmental document to be adequate for use in the solid waste facility permitting process, the proposed project must be described in sufficient detail to support all the specifications and conditions of the requested solid waste facility permit (permit). The permit concurrence process is greatly facilitated when this type of information is included, and thoroughly addressed, in the environmental document.

There are many differences between the information presented in the CEQA document, prepared to support the proposed project, and the information provided in the permit. PRC Section 44009(a)(2) states:

“If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to section 43020, or is not consistent with sections 43040, 43600, 44007, 44010, 44017, 44150, and 44152 or Division 31 (commencing with Section 50000), the board shall object to provisions of the permit and shall submit those objections to the local enforcement agency for its consideration.”

General Information versus Specific Information

Permits tend to include detailed information such as specific operating parameters, future plans for the project, and approvals that lock the project into a narrow scope. Some of the items listed in the permit may include peak tons per day, total site capacity, hours and days of operation, vehicle numbers, types of waste handled, method of handling waste streams, etc.

Permit processing problems may occur if the information in the CEQA document is too general and vague, and does not contain enough detail to support the detail and specific information for the facility in the requested permit. Some common mistakes made in project descriptions in environmental documents are:

- Details covering only what is needed for local and land use permits.
- Descriptions tend to be too narrow in scope.
- Allows for changes to project that do not affect land use decision.
- May not refer to solid waste facility permit requirements.
- Details buried in initial study.

- Alludes to other aspects of project, without detail.

The key issue a CEQA team for a proposed project should address is whether all aspects of the permit were reviewed and analyzed in the CEQA document.

Outdated CEQA Review and Project Changes

If an environmental review was completed 2-10 years prior to the permit, it may be outdated. This would depend on changes to the project and/or changes to the surrounding area of the project. Some changes to a project may require additional environmental review in the form of an addendum, a supplemental environmental document, or a new environmental document.

Many other additional changes in solid waste infrastructure, such as landfill closures, new compost facilities, new contracts, etc. could also affect the need to prepare a new or supplemental environmental document.

It is important that new projects, even if they are only minor ones, which are added to existing projects be evaluated as contributing to cumulative effects. When in doubt, an initial study should be prepared to address the proposed changes.

That said, an environmental document does not have a “use by date” or an expiration date.

CEQA Mitigations and State Minimum Standards

Some of the mitigations proposed, or changes to the project, could result in the mitigations being inconsistent with state minimum standards. Some examples would be dust control using leachate, interior dust control issues, and odor control.

Another problem may be that the LEA Mitigation Monitoring and Reporting Program may lack authority or may create duplication.

CEQA Process Mistakes

Some of the key CEQA process mistakes that may result in poor consistency between the environmental documents and the permit are:

- LEA and CalRecycle were not consulted early in the planning stages.
- LEA and CalRecycle were not included in document review process.
- Changes were made to the CEQA document after local enforcement agency and CalRecycle review.
- Application data does not match CEQA analysis.
- Proposed permit does not match CEQA analysis.

Possible Solutions

There are many solutions to avoid problems with CEQA documents and permit consistency. Of these, the primary actions that could reduce and/or eliminate problems later on are:

- The lead agency consults with the LEA and CalRecycle during preliminary review process.
- The CEQA document should describe the largest possible project.
- All relevant CEQA documents should be circulated through the State Clearinghouse.
- There should be an effort to respond to comments made on the CEQA document.
- If the document changes, the LEA and CalRecycle should be notified immediately.
- Ensure that all aspects of proposed project are described clearly and in detail, especially regarding tonnages, hours, vehicles, waste types, capacities, and waste handling methods.
- Consider making the report of facility information part of the CEQA document project description.
- Check for any and all changes since the last CEQA document review.
- Write the permit to match the issues analyzed for in the CEQA document.

Environmental Review Document Preparation Guidelines

Outlines have been developed by CalRecycle staff as guides to lead agencies in the preparation of CEQA documentation and to responsible agencies for their review of documentation for the construction and/or operation of a solid waste facility requiring a full solid waste facility permit (SWFP). The outlines are available at the CEQA Overview home page.

List of Common CEQA Problems

1. The Lead Agency did not contact all responsible agencies.

In their normal capacity as [lead agency](#), city and county planning departments do routinely prepare CEQA documents that are to be used by state [state responsible and/or trustee agencies](#). If the project proponent were not forthcoming regarding required state agency approvals for their solid waste facility project, the lead agency may not be aware that they are required "...to consult informally with all responsible agencies and all trustee agencies

responsible for resources affected by the project...". They may not be aware of the role of the LEA and/or CalRecycle in the approval of solid waste facility permits (SWFPs). They may not be aware of the requirement to circulate CEQA documents to the [State Clearinghouse](#) when there is a state responsible and/or trustee agency.

2. Early and/or complete consultation with responsible agencies.

The lead agency did not request early consultation with responsible agencies. Responsible agencies may have failed to respond to requests for consultation. The request for consultation may not be clearly identified, or understood by responsible agencies. The deadline for response may be too short for responsible agencies to generate a response.

Responsible agencies are required to use the lead agency's CEQA for subsequent approvals to the lead agency's approval. A responsible agency's approval will usually focus on activities of a project that are germane to the agency's statutory authority. The entitlements issued by the responsible agency frequently require a specialized or enhanced focus on activities which the agency is required to consider in their approval process. Therefore, a lead agency's project focus may not be conducive to the responsible agencies' needs in the CEQA process. Without a definitive source of data and information provided by each responsible agency for their approval, the CEQA document may be inadequate for the decision-making body to make an informed determination. Lack of response from a responsible agency is sometimes viewed as agreement relative to the lead agency findings.

If a responsible agency determines that the CEQA document prepared by the lead agency is inadequate for their approval(s), and the lead agency did not consult with the responsible agency prior to circulating the document, then the responsible agency may takeover the lead agency role on the project. If the lead agency consulted with the responsible agency regarding the project, and the responsible agency determines that the CEQA document is inadequate or incomplete, the responsible agency may choose litigation in order to get the CEQA document corrected.

3. Project changes after review period ends and prior to approval of the project.

CEQA, by design, is initiated during the very early planning phases of a project. The CEQA process is initiated when an application is submitted for project/entitlement approval by a public agency, usually the local city or county planning department, and then CEQA is initiated predicated upon the entitlement requests. For example, a solid waste operator submits an application to the local

planning department for a conditional use permit to operate a solid waste processing, transfer or disposal operation.

Based upon the restrictions for the particular land use zoning designations and zoning ordinances where the facility is to be located, the entitlement requests are predicated upon the particular land use restrictions of the [conditional] use permit. These restrictions may or may not be reflected in the terms and conditions of a solid waste facility permit. It is integral to the projects' development that entitlements be approved prior to any capital investment by the project proponent. Inherently, a project plan will change due to facets that are either not anticipated or not foreseen until the time the project is under full and deliberate development. New information or changes in the project scope and/or design will frequently happen during project development. These differences or changes of the scope and parameters of the project by the proponent, if significant, may, or may not be of critical significant importance to the initial local approval, but frequently do render further scrutiny under CEQA for subsequent approval by responsible agencies like the [CalRecycle](#) and the [local enforcement agency](#). The public and responsible agencies might not be informed of these changes. The lead agency may decide that the change does not warrant re-circulation. The changes might affect the comments and create new concerns of which the [lead agency](#) may not be aware.

4. The lead agency did not directly prepare an environmental document or review the prepared document for their approval prior to circulating it for public review.

Lead agencies have a wide variety of preferences on the preparation of an environmental document. Typically, a lead agency will send requests for proposals to private consultants and enter into a two-party contract. Under this scenario, a consultant will prepare an environmental document on behalf of the lead agency and the project applicant is given only minimal or no involvement in the process. Another scenario utilizes the three-party contract in which the agency, consultant and applicant all participate in the environmental document preparation. In lesser instances the applicant will prepare, or have prepared, an environmental document for the lead agency to use. Any agency that allows the applicant too much control over the CEQA document process could jeopardize its ability to defend the document if it is ever challenged. CEQA requires that the lead agency subject the draft environmental document to the lead agency's own review and analysis and that the document must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the information, conclusions, and findings in the CEQA document sent out for public and agency review and comment. Without a complete and thorough review of the document, the lead agency may remain

unaware of deficiencies in the document that it will be called upon to adopt or certify.

5. Lead agency did not circulate the document through the State Clearinghouse.

Lead agencies may consider all of the required approvals to be local and therefore may not have identified any State agencies as responsible agencies. Most solid waste facility projects will require permit action that requires concurrence by the CIWMB. Documents for projects requiring State agency approval must be circulated through the State Clearinghouse.

6. Misuse of exemptions.

When the lead agency files a notice of exemption (NOE) for a project, it is their independent finding that the project proposal/activity under their purview/consideration is either not subject to CEQA or that the activity clearly does not "...have the potential for causing a significant effect on the environment". The NOE is the notice of the finding of exemption and is not an environmental document. "The responsible agency complies with CEQA by considering the environmental impact report (EIR), [mitigated negative declaration (MND)] or negative declaration (ND) prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved" [14, CCR, section 15096(a)].

A categorical exemption might be inappropriately cited, or it may not apply. An exemption might be applied without benefit of a preliminary review. Responsible Agencies might accept the exemption as being in compliance with CEQA without making a preliminary review of the project. Supporting information for an exemption may not have been available to responsible agencies to aid them in determining the appropriate use of the exemption for CEQA compliance.

A general rule for the application of a CEQA exemption of a project is "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The primary overriding concern is whether, or not, there may be a 'significant' effect on the environment. CEQA defines a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." Webster's dictionary defines adverse as "unfavorable or harmful." The degree to which an impact is considered unfavorable or harmful is substantial.

7. Responsible agency comments may conflict with those of other agencies.

This may lead to confusion if two agencies provide conflicting comments. CEQA provides that responsible agency comments “should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or measures which the EIR should include. The comments shall be limited to those project activities which are within the agency’s area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency.” This does not preclude that responsible agencies’ comments will not overlap, as certain regulations will have communal authority (e.g. [Title 27, California Code of Regulations](#)). Coordination between responsible agencies regarding comments is prudent, but arranging such meetings may be difficult because of the short turn-around times for comments to be forwarded to the lead agency. Therefore, in a circumstance which clearly involves some regulatory overlap, it would be very helpful in preparing meaningful comments to consult with, or coordinate comments with, other [State] agencies reviewing the project.

8. Lead agency did not provide notice of the availability of the environmental document for public review or did not notice the date when the project approval will be considered.

The CEQA process requires appropriate noticing of the circulation of an environmental document, public hearings on the project proposal, and document availability to those parties, both public and private, whom have a vested interest in the project. Noticing that meets the minimum requirements of CEQA may be inadequate in reaching the members of the public most concerned with the project, therefore, doing more noticing than required to reach those interested parties would be beneficial.

9. Lead agency did not consider comments from responsible agencies.

Comments provided by responsible agencies often times reflect issues directly related to that agency’s regulatory authority concerning project activities which are within that agency’s expertise and/or powers, or which are required to be carried out or approved by the agency. When a permit is to be considered by a responsible agency for project approval, there will be specific quantitative values governing the size and scope of the project. Those quantitative values must be addressed in the CEQA document proposal, or project description, and analyzed in the impact(s) assessment, or initial study, of the CEQA document. In other words, if there are limits or restrictive values in the permit, then those values must be proposed and analyzed in the environmental documentation being used to support the decision to issue or deny the permit.

If the responsible agency's approval criteria are not addressed in the project description of the CEQA document, [14 CCR Section 15096\(e\)\(4\)](#) provides that a responsible agency may "Assume the lead agency role as provided in [14 CCR Section 15052\(a\)\(3\)](#) if [the] responsible agency believes that the final EIR or negative declaration prepared by the lead agency, is not adequate for use by the responsible agency...."

If the responsible agency believes that the environmental analyses is incorrect or inadequate, [14 CCR Section 15096\(e\)\(1\)](#) provides that a responsible agency may "Take the issue to court within 30 days after the lead agency files a notice of determination;" or within 180 days of the commitment to go ahead or approve the project where a notice of determination is not filed."

10. Lead agency did not file a notice of determination (NOD) with the county clerk and/or State Clearinghouse.

The filing of a [notice of determination \(NOD\)](#) reduces the opportunity for legal challenge to the project approval and informs responsible agencies of the conclusion of the CEQA process. It also provides a definitive date on which the project was approved and which documents were utilized to support the approval.

If the responsible agency believes that the environmental analyses in the CEQA document is incorrect or inadequate, [14 CCR Section 15096\(e\)\(1\)](#) provides that a responsible agency may "...take the issue to court within 30 days after the lead agency files a NOD, or within 180 days of the commitment to go ahead or approve the project where a NOD is not filed."

CEQA Requirements for Obtaining a Permit

Operator Permit Application Filing Requirements

For a full or standardized permit, the operator is required to submit the following CEQA information with the complete and correct permit application:

- Evidence of CEQA compliance; or,
- Information on the status of CEQA compliance; including,
- The proposed project description; and,
- Any CEQA mitigation monitoring implementation schedules.

Status Reports

While a status report may be adequate for submittal of the application, evidence of CEQA compliance is required prior to CalRecycle concurrence in order to obtain a full or standardized permit.

Lack of CEQA compliance is not a reason for finding an application incomplete or incorrect.

However, utilizing [Section 15111](#) of the CEQA Guidelines, an application would not be received (“[accepted for filing](#)”) by the LEA under the permitting statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable an LEA to complete the permit process. Thus the permit review timelines are halted until CEQA is sufficiently completed.

Evidence of Compliance

Once CEQA compliance has been achieved, evidence of compliance shall be submitted to the enforcement agency.

The following are examples of types of environmental documents that may be submitted to demonstrate evidence of CEQA compliance or status towards compliance:

- Initial Study
- Environmental Impact Report (EIR), Draft (DEIR), or Final (FEIR)
- Supplemental or Subsequent EIR (SEIR)
- Addendum to an EIR
- Negative Declaration (NegDec or ND)
- Mitigated Negative Declaration (MND)
- Notice of Determination (NOD)
- Notice of Exemption (NOE)
- Mitigation Monitoring Implementation Schedule (MMIS) and/or Mitigation Monitoring and Reporting Program (MMRP)
- Statement of Overriding Considerations

Please see the Natural Resources Agency’s [CEQA Guidelines](#) for more information on each type of environmental document.

LEA CEQA Review during the Permit Process

CEQA Review Process

The LEA should be available to provide the following services as a responsible agency:

- Provide guidance to local planning agencies.
- Scoping meetings.
- Early consultation.
- Comment on Initial Study and draft environmental document(s).

- Review final environmental document(s) and response to comments.

Permit Application Package Review Process

- Compare final environmental document(s) with application and/or proposed (or draft) permit, especially site design parameters such as tonnage, traffic, hours, etc. to make sure they match.
- Add terms and conditions to proposed permit to mitigate potential environmental impacts.
- Submit complete and correct application package and proposed permit to CalRecycle.
- Include required LEA CEQA finding with proposed permit.

LEA CEQA Finding Requirement

Full permit: the LEA must make the following written finding prior to submittal of a new or revised proposed permit:

“The proposed permit is consistent with, and supported by, existing CEQA analysis.” [27 CCR Section 21650\(g\)\(7\)](#).

Standardized permits: if evidence of CEQA compliance has not previously been submitted, evidence must be received within 15 days of acceptance of the application. [14 CCR Section 18105.2\(h\)](#)

Example: The LEA CEQA finding should support the proposed permit by including, at a minimum, the following information:

- A statement that the LEA has reviewed the CEQA document(s).
- References to all environmental documents and amendments that support this finding, including: title of environmental document, approving agency, date of approval, and State Clearinghouse number (SCH#).
- Finding language: “The proposed permit is consistent with, and supported by existing CEQA analysis.”
- Signed and dated by LEA.

CalRecycle CEQA Review during the Permit Process

CalRecycle Staff Role as a Responsible Agency

CalRecycle’s Permitting and Assistance Branch staff provide the following services as a Responsible Agency:

- Provide guidance to LEAs and local planning agencies.
- Conduct site visits.

- Attend local hearings.
- Attend scoping meetings.
- Provide early consultation.
- Comment on draft environmental document.
- Review final environmental document and response to comments.

Proposed Permit Package Review Process

- Receipt of complete and correct application and proposed permit package.
- Compare final environmental document with proposed (or draft) permit.
- Prepare analysis and recommendation for staff report.
- CalRecycle concurs or objects.
- Prepare and submit [Notice of Determination](#) (NOD) to [State Clearinghouse](#).

Staff Report CEQA Finding Requirement

For full and standardized permits, the following introductory statement is used by CalRecycle staff in the CEQA analysis section of the permit staff report:

For a project subject to CEQA, State law requires evidence of compliance with the California Environmental Quality Act (CEQA); either through the preparation, circulation, and adoption/certification of an environmental document; or by determining that the proposal is categorically or statutorily exempt prior to project approval.”

The staff report also contains a chronological reference to all environmental documents prepared for the project.

CalRecycle staff must make a determination prior to recommending concurrence in the issuance of a proposed permit that the final CEQA documentation is adequate for CalRecycle’s environmental evaluation of the proposed project for those project activities which are within CalRecycle’s expertise and authority, or which are required to be carried out or approved by CalRecycle.

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