

San Joaquin Valley Air Pollution Control District

District Policy APR 2010 CEQA Implementation Policy

Approved By: _____



Brian Clements
Director of Permit Services

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I. Purpose of the Policy

The District has a statutory obligation to fully comply with the provision of CEQA before issuing an Authority to Construct (ATC). The purpose of this policy is to:

1. Describe the California Environmental Quality Act (CEQA) and its application to the District's permitting actions, and
2. Provide guidance to District staff on how to comply with CEQA requirements when processing Authority to Construct (ATC) applications.

This purpose is achieved by:

1. Establishing a method to consistently evaluate project's potential environmental impact
2. Identifying projects requiring further CEQA analysis during project application preliminary review
3. Streamlining permit application process by identifying projects requiring further CEQA analysis
4. Properly allocating District resources according to the significance of the project's potential environmental impact

II. Applicability

This guidance is to be followed when processing ATC project application.

III. Definitions

Categorical Exemption: means an exemption from CEQA for a class of projects based on a finding by the Secretary of Resources that the class of projects does not have a significant effect on the environment.

CEQA: means the statutes contained within California Public Resources Code 21000-21177.

CEQA Guidelines: means the regulations prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of CEQA.

Discretionary Approval: means a decision involving the exercise of judgment or

deliberation when the public agency decides to approve or disapprove a particular activity.

General Exemption: means an exemption from CEQA for an activity, which can be seen with certainty that the activity in question may have a significant effect on the environment.

Lead Agency: means the public agency that has principal responsibility for carrying out or approving a project.

Ministerial Approval: means a decision involving little or no personal judgment when the public agency decides to approve or disapprove a particular activity. A ministerial approval involves the use of fixed standards or objective measurements.

Responsible Agency: means all public agencies other than the Lead Agency which have discretionary approval power over the project.

Project: means an activity that is being approved by a public agency and which may be subject to several discretionary approvals by government agencies.

IV. Background

The basic purposes of CEQA are to:

- Inform governmental decision makers and the public about the potential significant environmental effects of proposed projects.
- Identify ways to avoid or significantly reduce environmental impacts.
- Prevent significant, avoidable damage to the environment by requiring feasible changes to a project, use of alternatives, or mitigation measures.
- Disclose to the public the reasons why a governmental agency approved the project if significant environmental effects are involved.

Most projects that occur within the San Joaquin Valley will have an impact on air quality, either through construction related or operational related activities. As such, the under CEQA, the District has one of three roles:

- **Lead Agency**: The Lead Agency is the public agency that has the principal responsibility for carrying out or approving the project. The District is always the Lead Agency when it develops rules, regulations, and air quality attainment plans. The District becomes the Lead Agency for projects requiring air quality permits, when the project does not require any discretionary action from another agency. As a Lead Agency, the District complies with CEQA by determining the significance of the project's environmental impacts, preparing the appropriate environmental reviews and completing the public disclosure process, including the project's potential environmental impacts, measures taken to reduce the project's impact, and District's decision to approve the project.
- **Responsible Agency**: A Responsible Agency includes all public agencies, other than

the Lead Agency, which have discretionary approval power over the project. The District becomes a Responsible Agency for a project because of its discretionary approval of air permits. As a Responsible Agency, the District complies with CEQA by considering the environmental review document IR prepared by the Lead Agency and reaching its own conclusions on whether or how to approve the project. The District serves as a responsible agency for projects that require discretionary approval of an air quality permit. As a Responsible Agency, the District complies with CEQA by reviewing the environmental review document prepared by the Lead Agency and reaching an independent decision regarding the project's impact on air quality, measures taken to reduce the project's impact on air quality, and preparation of "Findings", disclosing the basis for District approval of the project.

- **Commenting Agency:** The District serves as a Commenting Agency when it has no discretionary approval over a project, however, the project could have an adverse impact on air quality. As a Commenting Agency, the District provides written comment to the Lead Agency to help them understand the project's potential impact on air quality, identify feasible mitigation measures, and to represent the public's trust in the District in matters of air quality.

V. CEQA Process Flowchart

See attachment A: *CEQA Process Flowchart*

VI. Air District CEQA Implementation

1. General Guidance

When an Authority to Construct (ATC) application is received, District staff will assess the project potential environmental impact consistent with the process outlined in the attached flowchart.

See attachment B: *District CEQA Implementation Process Flowchart*

2. Preliminary CEQA Significance Determination

The intent of the preliminary CEQA significance determination is to identify projects requiring further CEQA analysis during project application preliminary review stage. For this purpose, the engineer will complete the preliminary CEQA significance determination portion of the preliminary review form.

The preliminary CEQA significance determination is based on project potential environmental impact characterized by:

- Stationary Source Increase in Potential to Emit (SSIPE)
- Mobile sources emissions
- Water demand
- Nuisances
- Construction activities (potential impact on biological species)

- Greenhouse gas emissions
- Sources of potential public concern

3. Project ATC Application, Preliminary Review Processing Guidance

Gear and In-House PTO Projects

Gear and in-house PTO projects qualify for ministerial approval and are considered exempt from CEQA provisions. For Gear projects, as long BACT is proposed by the project proponent, no further discretionary approval is required by the District and an ATC will be issued.

Project SSIPE: District CEQA Significance Thresholds

For projects with SSIPE exceeding the District CEQA significance thresholds, it is required to receive a *CEQA Information supplemental form* completed by the applicant. This form will be used to determine the appropriate action to comply with CEQA requirements.

New Facilities

For new facilities, in addition to potential impact on air quality, construction activities may impact biological species and operation of the facility may result in potentially significant environmental impacts due to increased traffic, water demand, waste disposal, nuisances, or other potentially significant effects. Consequently, for new facility ATC application projects, it is required to receive a *CEQA Information supplemental form* completed by the applicant. This form will be used to determine the appropriate action to comply with CEQA requirements. If the *CEQA Information supplemental form* is not completed or not included with the ATC application form, the permit engineer will deem the project INCOMPLETE and will send a letter of incompleteness to the applicant.

Existing Facilities

For existing facilities, if the preliminary review indicates that the project MAY result in a significant environmental impact, the permit engineer will deem the project INCOMPLETE and will send a letter of incompleteness to the applicant, along with the *CEQA Information supplemental form* to be completed. This form will be used to determine the appropriate action to comply with CEQA requirements.

If the preliminary review indicates that the project would NOT result in a significant environmental impact the project would be deemed COMPLETE and no additional information would be required to process the project application.

Facilities/Operations of Potential Public Concern

Because of potential public concern, some projects may be considered significant by the public regardless of the District's determination of the project's impact on air quality. Projects receiving negative comments by local groups during public meetings, adverse media attention (newspapers or other periodicals), local news programs, or having environmental justice issues, etc. will require further District CEQA analysis. These projects will receive further analysis by the District for CEQA purposes.

Facilities/Operations with Increased Greenhouse Gas emissions

In addition to the above environmental determinations, projects with increases in greenhouse gas emissions that would exceed the District Zero Equivalency Policy for Greenhouse Gases level of **230**¹metric tons per year CO₂e (District Policy APR 2015) require a significance determination for potential impacts on global climate change. Said determination shall be to be processed consistent with the District Policy – *Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency* (APR 2005).

Detailed District CEQA Analysis Required

Based on ATC project application preliminary review determination, the permit engineer will forward the completed *CEQA Information supplemental form* along with the required information (Project description summary, project location, and SSIPE calculation) to Technical Services supervisor. The Technical Services supervisor will determine the appropriate course of action for completing CEQA requirements and will assign the project to a Technical Services staff member to prepare the appropriate CEQA document (Environmental Impact Report, Negative Declaration, Mitigated Negative Declaration, or Findings).

The assigned Technical Services staff member will prepare the required CEQA documents and will provide the engineer processing the ATC project application with a summary paragraph to be included in the engineering evaluation. When CEQA process is completed, the assigned Technical Services staff member will then return the CEQA Information supplemental form completed with the appropriate check marks to the engineer, indicating that ATC(s) can be issued.

Project Status (PAS Program)

If the Lead Agency for CEQA purposes has certified a CEQA environmental review document for the project AND all technical information necessary to proceed with the EE are received, the project application will be deemed COMPLETE (PAS program) and a letter of completeness with NO additional reference to CEQA will be sent to the applicant. In this case, the CEQA status for the project will also be deemed COMPLETE (PAS program – CEQA Section).

If the Lead Agency for CEQA purposes has NOT certified a CEQA environmental review document for the project AND all technical information necessary to proceed with the EE are received, the project application will be deemed COMPLETE (PAS program) and a letter of completeness, which includes a reference to the need to complete CEQA prior to issuance of ATC(s) will be sent to the applicant. In this case, the CEQA status for the project will be deemed INCOMPLETE (PAS program – CEQA Section). The CEQA status of the project will be changed to COMPLETE (PAS Program – see illustration below) after Technical Services staff has determined that the Lead Agency has certified a CEQA environmental review document for the project.

NOTE:

¹ September 7, 2010: Changed from 250 tons to 230 metric tons in accordance to APR 2015.

The CEQA Complete date entered into PAS is the date upon which: 1) Technical Services staff has received the Lead Agency’s environmental determination and/or certified CEQA environmental review documents for the ATC project, and 2) has determined the appropriate path for satisfying CEQA. It is important to note, the CEQA Complete date cannot be prior to the date the ATC application was received. Technical Services staff will provide the CEQA Complete date to the processing Engineer to be entered into PAS for the ATC project.

CEQA

CEQA Complete/Exempt by Lead Agency? Yes No

Date Complete/Exempt: **04/09/20**

District to file NOD/NOE: Ready

District CEQA Lead AND GHG increase > 230 M tons? Yes No

App Count:

4. Project ATC Application, Preliminary Review Processing Outcomes

The preliminary CEQA significance determination will result in 3 possible outcomes:

a. Project qualifying as a GEAR (Ministerial Approval):

A CEQA summary section is included in the GEAR engineering evaluation and no further CEQA action is required.

b. Project DOES NOT REQUIRE a detailed environmental impact analysis:

Based on the District project preliminary review, it has been determined that the project will not have a significant environmental impact. Before public notice, if applicable, and ATC issuance, a CEQA summary section will be added to the engineering evaluation according to District policy APR 1010; and no further CEQA action will be required.

c. Project DOES REQUIRE a detailed environmental impact analysis:

Based on the District project preliminary review, it has been determined that the project requires preparation of one of the following CEQA document: Environmental Impact Report (EIR), Negative Declaration (Neg. Dec.), Mitigated Negative Declaration (Mit. Neg. Dec.), or Findings. Before public notice, if applicable, and ATC issuance, a CEQA summary section will be prepared by staff and will be added to the engineering evaluation.

CEQA establishes statutory limitations to legally challenge an agency’s decision to approve a project based on the filing of a Notice of Determination (NOD) with the County Clerk’s office. If a NOD is filed with 5 days of issuing an ATC (project approval), the District liability is limited to 30 days, otherwise the liability is extended to 180 days. Therefore it is critical that the permit engineer coordinates issuance of the ATC with the filing of the appropriate CEQA documents. For this purpose, prior to ATC issuance, it is necessary for permit engineer to receive the completed

CEQA Information supplemental form from Technical Services AQS with check marks indicating that ATC(s) can be issued.

5. CEQA District Significance Thresholds

a. SSIPE

For Stationary Sources, the environmental impact study will compare the Stationary Source Increase in Permitted Emissions (SSIPE) to the CEQA District Thresholds of Significance

The SSIPE CEQA Significance Thresholds are established based on NSR offsets thresholds:

- NOx: 10 tons/year
- VOC: 10 tons/year
- PM10: 15 tons/year
- SOx: 27.4 tons/year

Mobile Sources Criteria Pollutants Significance Thresholds

For mobile sources, the significance thresholds are identical to the ones used for stationary sources (SSIPE):

- NOx: 10 tons/year
- VOC (or ROG): 10 tons/year
- PM10: 15 tons/year
- SOx: 27.4 tons/year

For screening purposes, these Mobile Sources Significance Thresholds equates to **47** additional heavy-duty truck one-way trips per day.

Significance Thresholds Determination:

Assumptions:

Vehicle Miles Traveled per trip: 135 miles (1/2 North-South District length)

Type of vehicle: heavy-heavy duty trucks

Criteria pollutant used to establish the significance threshold: to be conservative, the District will consider the criteria pollutant with the highest emission factor for diesel trucks, and the lowest annual emission significance threshold. The selected criteria pollutant is NOx.

Based on the assumptions listed above, the number of heavy-heavy duty trucks trips to exceed the annual NOx significance threshold (10 tons) is:

- For 2008: 19 one-way trips per day
- For 2009: 21 one-way trips per day
- For 2010: 23 one-way trips per day
- For 2015: 47 one-way trips per day

The proposed threshold of **47 additional heavy-duty truck one-way trips per day**

was established considering the following parameters:

- Conservative trip length,
- ARB regulation accelerating use of cleaner on-road heavy-duty fleet vehicles, and
- Maximizing the probability of identifying projects that would truly be significant.

b. Water

For CEQA purposes, the increase in water demand CEQA significance threshold is 5,000,000 gal/day.

c. Projects With Potential Public Concern

Because of potential public concern, some projects may be considered significant by the public regardless the District determination of the project impact on air quality. As discussed above, these projects will receive further analysis by the District for CEQA purposes. Please refer to District FYI to obtain additional information identifying facilities/operations requiring further CEQA analysis.

d. Construction Activities

A project may be subject to further District CEQA analysis if the project involves activities including disturbing soil outside the perimeter of the existing facility potentially affecting endangered species.

6. CEQA Tasks

a. CEQA Processing Tasks

When Permit Technical Services supervisor has determined that further District CEQA analysis is required, the project is assigned to a Technical Services staff member to prepare the appropriate CEQA document (EIR, Neg. Dec., Mit. Neg. Dec. or Findings).

The assigned Technical Services staff member will prepare the required CEQA documents and will provide the engineer processing the ATC project application with a summary paragraph to be included in the engineering evaluation. In keeping with the District's Core Values which call for open and transparent public processes, such summary paragraph should include details of litigation risk management discretion exercised in implementing section 6.b., below. These details should include the decision to require or not require an indemnity agreement and/or letter of credit, and the reasons for those decisions.

When CEQA process is completed, the assigned Technical Services staff member will then return the *CEQA Information supplemental form* completed with the appropriate check marks to the engineer, so ATC(s) can be issued.

b. Indemnification Agreement / Letter of Credit

The District is subject to potential litigation challenging the approval and issuance of a permit and/or any required CEQA documents. District policy requires the person or entity receiving the benefits of a permit and/or CEQA approval to bear the burden of the liability for potential litigation and the expense of such litigation.

Therefore, when the District is the Lead or Responsible Agency for CEQA purposes, an indemnification agreement and/or a letter of credit may be required. The decision to require an indemnity agreement and/or a letter of credit are based on a case-by-case analysis of a particular project's potential for litigation risk, which in turn may be based on a project's potential to generate public concern, its potential for significant impacts, and the project proponent's ability to pay for the costs of litigation without a letter of credit, among other factors. For the latest District policy on requiring indemnification agreements and letters of credit for specific projects, please contact District CEQA staff at (559) 230-6000.

When an indemnification agreement is required, Technical Services staff will contact the applicant to obtain the agreement. In keeping with the District's Core Values which call for open and transparent public processes, including District decisions related to indemnity agreements and letters of credit, Technical Services staff will provide the engineer processing the ATC project application with a summary paragraph to be included in the engineering evaluation, including details of the decision to require or not require an indemnity agreement and/or letter of credit, and the reasons for those decisions.

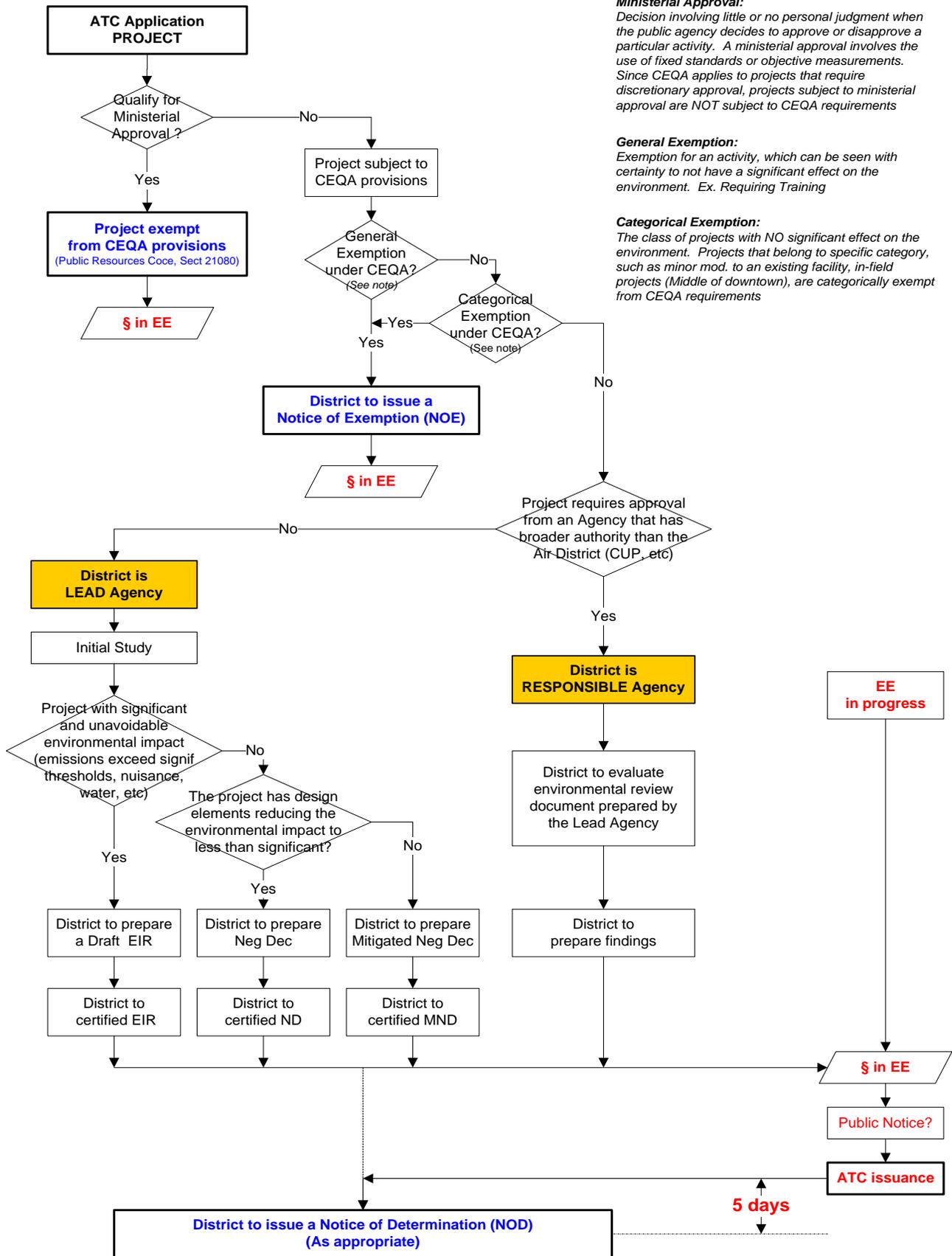
c. Filing CEQA Documents

When the District is the Lead Agency or a Responsible Agency for CEQA purposes, after receiving proof of posting the Notice of Determination (NOD), Technical Services staff will prepare the CEQA document file according to the CEQA Filing Retention District policy and the EDMS guidance. The completed CEQA document file will then be forwarded to be scanned (EDMS).

Attachment A: CEQA Process Flowchart

CEQA PROCESS

May 01, 2010



Ministerial Approval:

Decision involving little or no personal judgment when the public agency decides to approve or disapprove a particular activity. A ministerial approval involves the use of fixed standards or objective measurements. Since CEQA applies to projects that require discretionary approval, projects subject to ministerial approval are NOT subject to CEQA requirements

General Exemption:

Exemption for an activity, which can be seen with certainty to not have a significant effect on the environment. Ex. Requiring Training

Categorical Exemption:

The class of projects with NO significant effect on the environment. Projects that belong to specific category, such as minor mod. to an existing facility, in-field projects (Middle of downtown), are categorically exempt from CEQA requirements

Attachment B: District CEQA Implementation Process Flowchart

DISTRICT CEQA IMPLEMENTATION PROCESS – SUMMARY

May 01, 2010

Blue Characters: AQE Responsibility
Red Characters: Tec Sces Responsibility

