

# 17<sup>th</sup> Technical Training Series



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# CEQA and Solid Waste Facility Permitting

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# Presentation Overview

- ▶ CEQA Essentials
- ▶ Application to Solid Waste Facilities
- ▶ CEQA Requirements for Permit Processing
  - ▶ Permit Application Review
  - ▶ LEA CEQA Finding
  - ▶ CalRecycle Responsibility
  - ▶ Timelines and Waiver
- ▶ Common CEQA Issues
  - ▶ Permit Changes
  - ▶ Limitations on LEA as Lead Agency
  - ▶ CEQA and Local Hearings
- ▶ Example Scenarios

# What is CEQA and Who Must Comply?

- ▶ CEQA is the “California Environmental Quality Act” (1970)
- ▶ Statute requiring public agencies to:
  - ▶ Identify the significant environmental effects of their actions, if any
  - ▶ Avoid or mitigate such effects if feasible.
- ▶ A public agency must comply with CEQA when undertaking an activity defined as a “Project”

# What is a “Project”?

- ▶ A “Project” is defined as:
  - ▶ An activity
  - ▶ That may cause direct or reasonably foreseeable indirect physical change in the environment
  - ▶ And is:
    - ▶ Activity undertaken by public agency;
    - ▶ Activity undertaken by person supported by contracts, financial or other assistance from public agency; or
    - ▶ Activity involving issuance of lease, **permit**, license, certificate or other use entitlement by public agency

# Only “Discretionary” Projects Are Subject to CEQA

- ▶ CEQA applies to “discretionary projects approved by public agencies”
  - ▶ Discretion means “the exercise of judgment or deliberation”
- ▶ CEQA does not apply to “ministerial” projects
  - ▶ Little or no personal judgment as to the wisdom/manner of carrying out the project.
  - ▶ Eg. auto registration, dog licenses, and marriage licenses.

# CEQA and Solid Waste Facilities

- ▶ A Solid Waste Facility may be subject to CEQA two ways:
  - ▶ Construction/operation of a publicly owned solid waste facility
  - ▶ Permitting of the solid waste facility
    - ▶ CUP
    - ▶ LEA
    - ▶ RWQCB
    - ▶ Air District

# Lead and Responsible Agencies

- ▶ Determines which agency has primary responsibility for preparing an environmental document.
- ▶ *Lead Agency* - agency with *principal responsibility* for carrying out or approving a project.
  - ▶ Agency carrying out its own project (eg. public facility); or
  - ▶ Agency issuing entitlement approval (eg. permit)
    - ▶ Agency with general governmental police powers (Planning Dept. - CUP); or
    - ▶ Agency that acts first
- ▶ *Responsible Agency* - any agency other than lead that has a project approval.



# Lead and Responsible Agencies Cont'd

- ▶ With most Solid Waste Facilities, Lead Agency will be either:
  - ▶ Planning Dept. - CUP
  - ▶ Public Works - Publicly owned/operated facility
- ▶ LEA is generally a Responsible Agency unless:
  - ▶ No CUP issued or changed
  - ▶ Privately owned/operated facility
- ▶ CalRecycle is always a Responsible Agency (permit concurrence)
- ▶ Other potential Responsible Agencies:
  - ▶ RWQCB
  - ▶ Air District

# CEQA and LEA Responsibility

- ▶ 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.

# CEQA Compliance for Permit actions

- ▶ RFI Amendment
  - ▶ The change is consistent with existing CEQA documents and an additional environmental analysis is not warranted, or the change being requested is exempt from the requirements of CEQA
  - ▶ Examples include: new use of an approved ADC or reduction in operation hours
- ▶ New Full Permit
  - ▶ Evidence of CEQA compliance is always required.
  - ▶ Examples : new Landfill, Transfer/Processing Facility or Composting Facility
- ▶ Modified Permit & Revised Permit
  - ▶ The change has the potential to be consistent with existing CEQA documents; it also may require an additional environmental analysis.
  - ▶ Examples : increase in daily tonnage, increased operating hours, expansion of facility boundary

# 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.

# 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.

# Application Package Review Process

## Cont'd

- ▶ 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.

# Application Package Review Process Cont'd

- ▶ **15111. Projects with Short Time Periods for Approval**
- ▶ Appropriate to use when application is received with status report on progress toward compliance with CEQA.
- ▶ Document has not yet been circulated or finalized.
- ▶ The permit review timelines are halted until CEQA is sufficiently completed.

# LEA CEQA Finding requirements

- ▶ For a **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" [Title 27, Section 21650(g)(7)].
- ▶ The LEA is not required to make a CEQA finding EA Notifications & Registration tier permits.



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## LEA CEQA Finding requirements

A 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.

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## LEA CEQA Finding requirements

- ▶ Adequate Example: “The LEA finds that the proposed solid waste facilities permit is consistent with and supported by existing CEQA analysis. The LEA finds the permit action exempt under section 15301 Existing Facilities of the CEQA Guidelines. A notice of exemption will be filed with the County Clerk and the State Clearinghouse.”
- ▶ Inadequate Example: Wrong CEQA document cited in cover letter or incorrect State Clearinghouse number in Proposed Permit.

# CalRecycle 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) (PDF, 85 KB) to State Clearinghouse.

# CEQA and CalRecycle Responsibility

## Reviewing for Completeness

- ▶ Per Title 27, 21680(b), CalRecycle shall not concur in issuance of the proposed solid waste facilities permit for new and revised solid waste facilities permits, and the Executive Director of CalRecycle for modified solid waste facilities permits, if the following has not been submitted to the EA and CalRecycle:
  - ▶ The EA finding that existing CEQA documentation is consistent with and supports the proposed solid waste facilities permit and RFI, or
  - ▶ Supporting information indicating the EA has found that approval of the proposed solid waste facilities permit would not lead to any adverse environmental impacts and is exempt from the requirements of CEQA.

# CEQA and CalRecycle Responsibility

- ▶ 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 permitting process, the proposed project must be described in sufficient detail to support all the specifications and conditions of the requested permit.
- ▶ The permit concurrence process is greatly facilitated when this type of information is included, and thoroughly addressed, in the environmental document.

# Common Problems With CEQA Documents and Permit Consistency

- ▶ Application data does not match CEQA analysis.
- ▶ Proposed permit does not match CEQA analysis.  
Potential causes:
  - ▶ 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.

# Waiving Timelines per California PRC

- ▶ From the Operator [the Permit Applicant] to the LEA and CalRecycle:
- ▶ “To allow the California Department of Resources Recovery and Recycling additional time to consider the proposed new/modified/revised solid waste facilities permit for the \_\_\_\_\_ Landfill/Transfer/Processing Station/etc. (SWIS # XX-AA-00XX), as the applicant for the permit, hereby expressly waives the time for \_\_\_\_\_, the Local Enforcement Agency (“LEA”), to consider the permit application under Public Resources Code Section 44008 and for CalRecycle to consider the proposed permit under Public Resources Code Section 44009 and under any CalRecycle regulations which implement or interpret those statutes or otherwise set time periods for CalRecycle or the LEA to review and act on a permit application or a proposed permit. As the applicant, we request that the CalRecycle postpone its consideration of the proposed permit until \_\_\_\_\_. This waiver terminates on \_\_\_\_\_, unless we extend it by a writing delivered to the LEA and CalRecycle.”

# How to avoid problems with CEQA documents and permit consistency

- ▶ 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.
- ▶ 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.



# Types of CEQA Compliance

- ▶ Exemptions - Statutory, Categorical or “Common Sense”
- ▶ If no exemption, then Initial Study to determine whether “significant effect on the environment” exists.
  - ▶ Negative Declaration or Mitigated Negative Declaration
  - ▶ Environmental Impact Report or “EIR”

# CEQA Issues Raised by Permit Changes

- ▶ A new Solid Waste Facility Permit virtually always involves an EIR or Mitigated Negative Declaration.
- ▶ When the project changes and solid waste permit is modified or revised, how does CEQA compliance work?

# CEQA Issues Raised by Permit Changes

- ▶ Step 1 - Review for exemptions:
  - ▶ Is there negligible or no expansion of use? Exemption may be appropriate.
  - ▶ Most common - Class 1 "Existing Facilities" or "Common Sense"
  - ▶ Example scenarios:
    - ▶ Administrative changes - owner/operator address, closure year, minor boundary adjustments, no waste volume increase
  - ▶ Others - Class 3 and 4 Exemptions
    - ▶ New Construction or Conversion of Small Structures
    - ▶ Minor Alterations to Land

# CEQA Issues Raised by Permit Changes

- ▶ If no exemptions apply and there is an existing environmental document
- ▶ Analyze whether Subsequent EIR or Negative Declaration is appropriate
- ▶ CEQA Guidelines Section 15162
  - ▶ *Substantial changes* to project or circumstances with *new or more severe environmental effects*?
  - ▶ If yes, prepare subsequent document
  - ▶ Examples - substantial tonnage or traffic increase; substantial expansion in days and hours of operation.

# CEQA Issues Raised by Permit Changes

- ▶ Non-exempt changes that do not require subsequent document.
- ▶ Example - insubstantial changes to hours or days of operation or tonnage/traffic volume.
- ▶ Options:
  - ▶ File NOD on existing document
  - ▶ Prepare an Addendum
  - ▶ CalRecycle generally prefers to work with Addendums to clarify/bolster CEQA record

# CEQA Addendum

- ▶ What is an “Addendum” ...AKA Technical Addendum?
  - ▶ A brief explanation
  - ▶ Supported by substantial evidence
  - ▶ Justifying the decision of the Lead or Responsible Agency
  - ▶ That project change is insignificant
  - ▶ Will not result in new or substantially more severe environmental effects requiring additional analysis
- ▶ Can be used to make minor technical changes or additions to existing CEQA document.

## CEQA Addendum Cont'd

- ▶ Should contain the subject, project description, and summary
- ▶ Extensive detail beyond that needed for evaluation and review is NOT required.
- ▶ Subsequent environmental document should be covered.
- ▶ Document circulation not required. Complete and file Notice of Determination.

# Special Limitations When LEA is Lead Agency

- ▶ LEA as Lead Agency does *not* have general police power
  - ▶ Authority limited to explicit powers granted by Integrated Waste Management Act (IWMA)
  - ▶ Mitigation may only be enforced through IWMA authority as permit terms
  - ▶ IWMA prohibits regulation of:
    - ▶ Air Quality
    - ▶ Water Quality
    - ▶ Odor (except compostable material operations/facilities)
    - ▶ Thus, permit terms cannot regulate these issues.
- ▶ When preparing EIR or Mitigated Negative Declaration, be mindful of such limitations!




# CEQA and Requests for Local Hearing

- ▶ Under Public Resources Code Section 44307, CEQA compliance is NOT a proper basis for a local hearing request.
- ▶ Statutory language limits hearing jurisdiction to IWMA and regulations
- ▶ Note that CEQA mitigation measures incorporated as permit terms are fair game if LEA fails to enforce.

# Scenario #1

- ▶ Privately owned/operated MRF
- ▶ Tonnage increase from 8,000 to 8,500 tons per day.
- ▶ Change in days of operation from Mon - Friday to Tues - Saturday.
  - ▶ Daily hours unchanged.
- ▶ An EIR was prepared 5 years ago that analyzed:
  - ▶ 8,000 tons/day
  - ▶ Mon - Fri days of operation
- ▶ Planning Department determines no CUP change is required
- ▶ Questions:
  - ▶ Is this a "project"?
  - ▶ Who is Lead Agency?
  - ▶ What are the CEQA compliance options?

## Scenario #2

- ▶ You are the LEA and you have already accepted an application for a permit revision as complete and correct and made the required CEQA finding in the proposed permit cover letter which was submitted to CalRecycle.
- ▶ You are informed by CalRecycle Permitting and Assistance Branch staff, that the existing CEQA is not adequate for the Department's use as a Responsible Agency.
- ▶ What do you do? 
- ▶ Inform the applicant and give them the option to request a waiver of the permitting timelines per PRC rather than have the proposed permit denied by CalRecycle and require the applicant to begin the permitting process from scratch.
- ▶ If the operator chooses to waive time, request to withdraw the proposed permit from CalRecycle.
- ▶ Once CEQA is adequate for CalRecycle's use as a Responsible Agency, re-submit the proposed permit and resume timeline per PRC 44009.

# Additional Resources

- ▶ Permitting Toolbox,  
<http://www.calrecycle.ca.gov/SWFacilities/Permitting/CEQA/default.htm>
- ▶ California Natural Resources Agency - <http://resources.ca.gov/ceqa/>
- ▶ Governor's Office of Planning and Research (OPR) -  
[https://www.opr.ca.gov/m\\_ceqa.php](https://www.opr.ca.gov/m_ceqa.php)
- ▶ OPR's CEQA Net Database - <http://www.ceqanet.ca.gov/>
- ▶ Your Local Planning Department

# Questions?

- ▶ Harllee Branch
- ▶ [Harllee.Branch@CalRecycle.ca.gov](mailto:Harllee.Branch@CalRecycle.ca.gov)
  
- ▶ Nevin Yeates
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