

Letter 62

Guenther W. Moskat
Chief
Office of Planning & Environmental Analysis
Department of Toxic Substance Control

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Comment 62-1

Discretion given to lead agencies to choose appropriate methodologies for conducting a GHG impact assessment is too broad and unclear to DTSC. The proposed amendments appear to be oriented towards land use projects or transportation related projects and lack the necessary guidance for agencies like DTSC to develop substantial evidence to support finding a project does not have a significant impact.

Response 62-1

The proposed amendments must be broad enough to encompass all types of projects that may be proposed. Thus, the proposed amendments provide guidance related to determining significance of a project's greenhouse gas emissions, mitigating those emissions if significant, and making use of various streamlining provisions. The comment indicates the Department of Toxic Substances Control typically is involved in either treatment and remediation projects or permitting of waste treatment facilities. The concepts expressed in the proposed amendments should apply broadly enough to allow DTSC to evaluate its unique projects. For example, section 15064.4, on the determination of significance of greenhouse gas emissions, states that the determination of significance "calls for a careful judgment by the lead agency," and "in the context of the particular project," after making "a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." Further, the existing CEQA Guidelines already provide that an impact analysis must account for all project phases, including construction and operation, as well as indirect and cumulative impacts. (State CEQA Guidelines, §§ 15063(a) ("[a]ll phases of project planning, implementation, and operation must be considered in the initial study..."), 15064(h) (addressing cumulative impacts), 15126 ("[a]ll phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation"), 15358(a)(2) (defining "effects" to include indirect effects .) To the extent the Department of Toxic Substances Control needs additional guidance for its own projects, the existing CEQA Guidelines expressly recognize the Department's ability to develop its own specific guidelines. (State CEQA Guidelines, § 15022.) No further revisions are necessary in response to this comment.

Comment 62-2

Revise the Guidelines to provide more regulatory guidance on the use of methodologies and thresholds to establish a level of consistency. The lack of consistently applied methodologies to analyze GHG emissions, absent thresholds, is problematic.

Response 62-2

The proposed amendments do not establish a single statewide threshold of significance; rather, the proposed amendments recognize that CEQA leaves the determination of significance to the lead agency. (Compare State CEQA Guidelines, § 15064 with proposed § 15064.4.) The precise methodology used to determine significance is also left to lead agencies. (*Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) Lead agencies are encouraged to develop their own thresholds of significance and precise procedures to evaluate projects within their expertise. (State CEQA Guidelines, §§ 15022, 15064.7.) The proposed amendments recognize that many agencies may find the establishment of thresholds for greenhouse gas emissions to be a difficult undertaking, and so recognize that lead agencies may rely on thresholds developed by other agencies where such thresholds are supported by substantial evidence. (See proposed State CEQA Guidelines, §§ 15064.4(b)(2), 15064.7(c).) No further revisions are necessary in response to this comment.

Comment 62-3

Clarify or revise Section 15126.4(c). Listed mitigation strategies may not be applicable or feasible, particularly offsets, for DTSC or other state agencies to undertake for statutorily mandated environmental protection-oriented projects.

Response 62-3

The proposed section 15126.4(c), addressing mitigation of greenhouse gas emissions, was designed to recognize a lead agency's discretion to choose the most appropriate mitigation for a particular project. The mitigation strategies included in the list are non-exclusive, as signaled by the phrase "may include". The Natural Resources Agency further revised that section to indicate that lead agencies may consider the listed strategies, "among others." Thus, DTSC and other lead agencies are free to develop more specific mitigation strategies that are more tailored to their specific types of projects, so long as that mitigation is consistent with the general provisions in section 15126.4. The comment does not provide specific suggestions for revisions, and the Natural Resources Agency finds that no further revisions are required in response to this comment.

Comment 62-4

Specific mitigation strategies listed in section 15126.4(c) appear to be primarily locally or regionally oriented and may not be applicable to DTSC or other state agencies. The Guidelines should be revised to require lead agencies to rely on GHG impact assessment methodologies and thresholds as established by ARB pursuant to AB 32.

Response 62-4

The Natural Resources Agency declines to revise the proposed amendments to require compliance with a specific threshold or methodology. The suggestion is rejected for several reasons. First, given the development of the proposed amendments and thresholds in several regional air districts, the California Air Resources Board has placed its CEQA threshold effort on hold. Thus, at this time, ARB has no thresholds that the CEQA Guidelines could require agencies to apply. Second, requiring application of a particular threshold would represent a major departure from CEQA. As explained above, in Response 62-3, CEQA leaves to lead agencies the determination of significance and the selection of methodologies to analyze an impact. Nothing in SB97 indicated that the legislature intended to change these existing CEQA concepts.

Moreover, different thresholds of significance are applied throughout the state for different impact categories. For example, different air districts have different threshold levels of different pollutants. While greenhouse gases are global pollutants, local jurisdictions or regional agencies may determine that they have limited capacity to allow new greenhouse gas emissions, for example, based on existing levels of emissions and projected growth, and so may decide that thresholds in their area should reflect that limitation. This circumstance is consistent with existing section 15064(b), which acknowledges that the determination of significance may vary with a project's setting.

Comment 62-5

Commenter suggests that DTSC and ARB confer prior to ARB establishing thresholds to ensure such thresholds are reasonable and straightforward to assist DTSC to meet the intent of both AB 32 and SB 97.

Response 62-5

The Natural Resources Agency encourages other state and local agencies to participate in the development of thresholds at state, regional and local agencies. Once such thresholds are adopted, the proposed amendments acknowledge that lead agencies may choose to rely on those thresholds so long as they are supported with substantial evidence. (See, e.g., proposed Sections 15064.4(b)(2) and 15064.7(c).) No further revisions are required in response to this comment.