

Lockey, Heather@CNRA

From: Veera Tyagi <vtyagi@aqmd.gov>
Sent: Thursday, March 15, 2018 4:32 PM
To: CEQA Guidelines@CNRA
Cc: Bayron Gilchrist; Barbara Baird
Subject: SCAQMD Comment Letter on Updates to the CEQA Guidelines (2017)
Attachments: SCAQMD Comment Letter- Amendments to CEQA Guidelines 2017.pdf

Dear Mr. Calfee,

Thank you for the opportunity to comment on the proposed action on the CEQA Guidelines. Attached please find a comment letter from SCAQMD staff, which outlines some concerns regarding the updates to the Air Quality, Energy, and Environmental Setting sections. As always, please let us know if you would like to discuss these issues further.

Sincerely,

Veera

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March 15, 2018

Via electronic email: CEQA.Guidelines@resources.ca.gov

Christopher Calfee, Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Mr. Calfee,

The staff of the South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to provide input on the final version of the Proposed Updates to the CEQA Guidelines ("2017 Updates"). The SCAQMD has primary responsibility under federal and state law for controlling air pollution in the South Coast Air Basin. We have extensive experience with CEQA as we work towards improving the region's air quality by providing comments on the air quality analysis of the CEQA documents prepared within our jurisdiction, in our role as a responsible agency, and as a lead agency for our own rule development process and for any discretionary permits we may issue. The 2017 Updates, particularly as they relate to air quality and related environmental topics, are important to our work.

We would like to thank OPR for addressing several of the concerns we raised in our 2015 comment letter on the preliminary draft changes to the CEQA Guidelines ("2015 Comments"). We note, however, that we maintain additional concerns with the air quality, energy, and environmental setting updates to the Guidelines. We hope that our specific expertise in air quality, and related impact areas, will provide constructive input on the development of the 2017 Updates.

Where appropriate, additional proposed language appear in underline, while deletions appear as strikeouts.

Air Quality (2017 Updates Pg. 44):

1) Appendix G Environmental Checklist-Threshold Question III. a):

Our 2015 Comments supported proposed changes to Air Quality section III a), which added “or exceed significance criteria established by the applicable air quality management or air pollution control district?” to the end of the threshold question. We note that this additional language has been removed from the 2017 Updates. We continue to believe that the additional language promotes the use of consistent and verifiable standards in the respective air basins, and therefore, ask that OPR revert back to the 2015 threshold question III a).

2) Appendix G Environmental Checklist-Threshold Question III. b):

We are concerned that the streamlining efforts for question III b) and the deletion of c), will lead to confusion and uncertainty. We propose the following change to question III b) to incorporate some of the certainty that is lost through the deletion of c).

Proposed Change: “Violate any air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in any criteria pollutant (including their precursors) for which there is an applicable federal or state ambient air quality standard?~~an existing or projected air quality violation?~~”

Reasoning: Based on our experience, the response to question III b) typically involves analysis and comparison to emissions thresholds (i.e. per pound per day) set by air districts as well as a modeling analysis, where appropriate, to estimate pollutant concentrations from the project including background levels to compare to the ambient air quality standards (micrograms per cubic meter); while the response to question III c) typically involves analysis of the cumulative impacts of the project’s emissions to a non-attainment area and recognizes that precursors to criteria pollutants are also important to attaining standards. Our proposed language preserves the need for the analyses described above and clarifies that emissions of precursors are important to attaining standards, while allowing lead agencies to streamline their responses to remove duplicative analyses.

It is important to note that an impact should be significant if it contributes significantly to an existing or projected future violation of the NAAQS and does not need to make the violation actually worse. Thus, if an area is currently in nonattainment for PM2.5 annual standard 12 micrograms per cubic meter because it records 15 micrograms per cubic meter, and in the future it is expected to still violate, despite air quality improvement, say at 14 micrograms per cubic meter, a project that

contributes significantly to that projected future violation of the NAAQS should still be significant. The OPR proposed language would instead require that the project have a cumulatively considerable contribution to an INCREASE of the violation, such as from the currently-projected 14 micrograms to 15 micrograms. It would take a very large amount of emissions to increase the level of violation from 14 to 15 micrograms, so it is unlikely that this trigger would ever be met. On the other hand, a significant contribution to a projected violation of 14 micrograms might be found with a smaller amount of emissions that still offers an opportunity for mitigation, e.g. by reductions of PM2.5 through electrification or reduction of PM2.5 precursors such as NOx through ultra-low NOx mobile equipment.

Energy (2017 Updates Pgs. 67-68):

1) CEQA Guidelines Section 15126.2:

We are very pleased that the Environmental Checklist in the 2017 Updates was changed to include “or wasteful use of energy resources” in the threshold question on Energy usage. This addition addresses our concern that CEQA should provide a clear threshold question to address the wasteful use of energy resources. But we note that similar updates were not made to CEQA Guidelines § 15126.2(b). We propose the following additions to CEQA Guidelines § 15126.2(b) to align with the Environmental Checklist:

Proposed Change: “Energy Impacts. If the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, the EIR shall analyze and mitigate that energy use. This analysis should include the project’s energy use, or wasteful use of energy resources, for all project phases and components, including transportation-related energy, during construction and operation....This analysis is subject to the rule of reason and shall focus on energy demand or generation that is caused by the project....”

Reasoning: Based on our permitting experience, energy resources can sometimes be produced as a by-product (gas by-product from oil production, refining, landfill operations), which can either be disposed (i.e. flaring) or converted into renewable energy. Flaring that produced gas, instead of making beneficial use of it is also a waste of an energy resource and undermines goals towards reducing GHG impacts. Beneficial use includes activities such as the use of microturbines, gas re-injection and gas sales. CEQA should specifically address this type of energy wastage to facilitate efforts to make beneficial use of by-product gas, where possible.

Baseline (2017 Updates Pgs. 95-96):

We appreciate OPR's work to update the Guidelines to reflect recent case law regarding the baseline for environmental analysis. However, we seek clarification on 15125(a)(2) and maintain an earlier concern on Section 15125(a)(3).

1) CEQA Guidelines Section 15125(a)(1) and (2):

The proposed changes to section 15125 are intended to align the section with general principles regarding who can generally demonstrate whether substantial evidence exists to support the use of a particular baseline.

Proposed Change:

Section 15125(a)(1): "Generally, the ~~lead agency environmental setting~~ should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, ~~a lead agency may define~~ existing conditions may be defined by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition to existing conditions, ~~a lead agency may also use~~ baselines consisting of projected future conditions that are supported by reliable projections based on substantial evidence in the record may also be used."

Section 15125(a)(2): "A ~~lead agency may use either a historic conditions baseline or a~~ projected future conditions baseline may be used as the sole baseline for analysis only if ~~it demonstrates with~~ substantial evidence demonstrates that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record."

Reasoning: As Section 15125(a)(1) acknowledges, there may be reason to select more than one baseline for analysis. Section 15125(a)(2) acknowledges that there may be times where only a future conditions baseline is appropriate for analysis. The proposed revisions are intended to facilitate input from the public on the choice of baseline. A baseline depicting an accurate picture of the physical environmental conditions is an essential prerequisite to a legally adequate environmental review. Without it, "analysis of impacts, mitigation measures, and project alternatives becomes impossible" and informed decision-making and public participation cannot occur. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953-955. The public should not be left out of providing input on this very important issue.

2) Clarification on CEQA Guidelines Section 15125(a)(2):

The 2017 Update proposed to amend Section 15125(a)(2) to read as follows,

“A lead agency may use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.”

The inclusion of “historic conditions baseline” is unclear. Section 15125(a)(1) defines an existing conditions baseline as potentially including historic conditions [“a lead agency may define existing conditions by referencing historic conditions...”]. But, as drafted, section 15125(a)(2) implies that a historic conditions baseline is something other than an existing conditions baseline and creates another baseline (e.g., a historic conditions baseline, an existing conditions baseline, and a projected future conditions baseline). This appears to be an inconsistency that should be clarified.

3) CEQA Guidelines Section 15125(a)(3):

The proposed change is to clarify that section (a)(3) applies to existing conditions baselines only because a future baseline relies on conditions that have not actually occurred yet. If this change is not made, then clarification on the term “hypothetical conditions” needs to be provided.

Proposed Change: “*An existing conditions baseline should not include* ~~A lead agency may not rely on~~ hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.”

Reasoning: The proposed addition to section 15125(a)(3) makes clear the prohibition against the use of hypothetical conditions that have not been achieved in practice, applies only when using the existing conditions baseline. The existing conditions baseline is the scenario that was discussed in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal4th 310, 322. Otherwise, as currently drafted, section 15125(a)(3) renders the discussion on the use of future conditions in section 15125(a)(2) meaningless because the future conditions will never have actually been achieved in practice yet.

Christopher Calfee
California Natural Resources Agency
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Again, the SCAQMD staff thanks your agency for the opportunity to provide comments on 2017 Updates. If you have any questions or seek clarification on the suggestions raised in this letter, please contact me at (909) 396-2302 or bbaird@aqmd.gov.

Respectfully submitted,

A handwritten signature in black ink that reads "Barbara Baird". The signature is written in a cursive, flowing style.

Barbara Baird
Chief Deputy Counsel