

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

DRAFT STAFF REPORT

Streamline CEQA Commenting Process with Programmatic Approach

November 25, 2014

Prepared by: Jessica Willis, Air Quality Specialist
Mark Montelongo, Senior Air Quality Specialist
Patia Siong, Supervising Air Quality Specialist
Chay Thao, Program Manager

Reviewed by: Arnaud Marjollet, Director of Permits
Dave Warner, Deputy Air Pollution Control Officer

I. SUMMARY

The San Joaquin Valley Unified Air Pollution Control District (District) takes an active role in the intergovernmental review process as a Commenting Agency under the California Environmental Quality Act (CEQA). The District, in this role, has incorporated a significant number of efforts into the CEQA commenting process to increase the efficiency, project turnaround time, and effectiveness in assisting Lead Agencies to address air quality impacts of proposed projects. In continuation of these efforts, the District is proposing to develop and implement a programmatic approach to the District's CEQA commenting process for specific categories of projects that are suitable for this approach.

The proposed programmatic approach will provide Lead Agencies with a more efficient, responsive, and effective alternative process for submitting and receiving District comments early in the review process.

II. BACKGROUND

A. California Environmental Quality Act (CEQA)

CEQA is a state statute that requires state and local agencies to identify the significant environmental impacts of projects and to require the avoidance or mitigation of those impacts, if feasible. Under CEQA, a "project" is defined as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) an activity directly undertaken by any public agency, (b)

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an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or (c) an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

B. Roles under CEQA

The role of an agency depends on the extent of the agency's discretionary approval authority over a project as follows:

Lead Agency: A Lead Agency is the public agency with the broadest authority for approving or carrying out the project and therefore has the principal responsibility for carrying out or approving a project subject to CEQA¹. Lead Agencies are responsible for complying with CEQA by ensuring that all potential environmental impacts of proposed projects are adequately assessed, and environmental damage is avoided or minimized where feasible. For example, land use agencies are typically the Lead Agency for development projects, because they have the broadest authority for approving those types of projects.

Responsible Agency: A Responsible Agency is a public agency, other than the Lead Agency, that has responsibility for carrying out or approving a project subject to CEQA². While a Lead Agency must consider all of the potential impacts of a project, a Responsible Agency is limited to those aspects that are within the agency's area of expertise or which are required to be carried out or approved by the agency³. A Responsible Agency complies with CEQA by considering the environmental document prepared by the Lead Agency and making its own conclusion.⁴

Trustee/Commenting Agency: Under CEQA, an agency that has "jurisdiction by law" over a particular natural resource but does not have discretionary approval over the project is a "Trustee Agency"⁵, more commonly known as a "Commenting Agency". The District serves as a Commenting Agency in providing technical expertise in characterizing project related impacts on air quality when reviewing projects of various land uses (i.e., residential, commercial, and industrial). In addition to reviewing a project's impact on air quality, the District may review and comment on sections of the environmental document that relate to air quality impacts, for example traffic and health risks. When serving as a Commenting Agency, the District may provide the Lead

¹ PRC §21067; CCR §15051

² PRC §21069

³ PRC §21104(c), 21153; CCR §15086(c), 15096(d)

⁴ CCR §15096

⁵ PRC §21070

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Agency with comments on the adequacy of the air quality analysis, identify District rules which apply to the project, and recommend potential mitigation measures for the Lead Agency's consideration.

The District is not proposing any changes to processes implemented by the District under its Lead Agency and Responsible Agency roles. These roles require detailed project-specific review and analysis. The focus of the programmatic approach is to better serve Lead Agencies and project proponents by enhancing the efficiency and effectiveness of the District's processes when acting as a Commenting Agency.

C. District's Current Process as a Commenting Agency

Receiving Requests for Comments

Depending on the Lead Agency's internal CEQA process, the District can receive project referrals and requests for comments as few as one time and up to as many as three times during the CEQA process. In general, the District receives a project referral (usually a copy of the Lead Agency's application form) and the opportunity to comment only once during the preliminary review step for projects that require a Notice of Exemption (NOE) or Negative Declaration (ND). However, for projects in which an Environmental Impact Report (EIR) is prepared, the District typically receives 1) a project referral (usually a copy of the Lead Agency's application or Initial Study) during the early consultation phase; 2) the Notice of Preparation (NOP), which may include the Initial Study and air quality analysis, during the document preparation phase; and 3) a copy of the Draft and Final EIRs during the public comment phase.

Processing Requests for Comments

In general, the Lead Agency submits, via mail or email, to the District a request for air quality related comments for a specific project. The following steps are then taken:

- Step 1: Projects are screened. A screening process is used to identify the level of review and the extent of comment required. One of the main screening tools developed by District staff is the Small Project Analysis Level (SPAL). SPAL identifies the project type and size for which the District has pre-quantified emissions and determined a project size below which it is reasonable to conclude that a project would not have a significant impact on air quality.

The applicability thresholds established in District Rule 9510 (Indirect Source Review) serve as another screening tool. Rule 9510 is applicable to

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development and transportation projects emitting two tons or more of Oxides of Nitrogen (NO_x) or Particulate Matter of 10 microns or less in size (PM₁₀). The rule applicability thresholds are established by project type (residential, commercial, industrial, educational, etc.) and are used to identify projects that may be subject to Rule 9510.

- Step 2: Screened projects are categorized. Based on these screening tools, projects are categorized into three varying levels of response:

Level 1: Projects in Level 1 response category (Level 1 Projects) are below the appropriate SPAL and determined to not be subject to District Rule 9510. The criteria pollutant emissions from these projects will not have a significant impact on air quality and therefore no commenting letter is sent to the Lead Agency unless specifically requested by the Lead Agency. However, on a case-by-case basis, the District may provide the Lead Agency with a comment letter if the District determines that the project may have other potential significant air quality impacts.

Level 2: Projects in Level 2 response category (Level 2 Projects) are below the appropriate SPAL but determined to be subject to District Rule 9510. The criteria pollutant emissions from these projects will not have a significant impact on air quality. For these projects, comments are prepared based on District developed templates. Additional comments are added on a case-by-case basis, to address other potential significant air quality impacts.

Level 3: Projects in Level 3 response category (Level 3 Projects) are above the appropriate SPAL, regardless of District Rule 9510 applicability. Level 3 Projects, due to their potential for significant air quality impacts within the San Joaquin Valley, may have a greater potential for public concern. These projects require detailed and thorough project-specific review by District staff to ensure air quality impacts are adequately addressed.

- Step 3: District prepares commenting letter. The District then assesses the project's potential impact on air quality and prepares a letter (commenting letter) that identifies the project, its impact on air quality, recommended feasible mitigation measures to be incorporated, and District rules and regulations that may apply. The District has developed template commenting letters for commonly seen types of projects to address District rules and regulations that apply and common issues seen with CEQA air quality analyses. Template letters are used to streamline commenting processes for both Level 2 and Level 3 Projects.

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- Step 4: Comment letter is issued. The commenting letter is then provided to the Lead Agency via mail or email.

To further assist other agencies in evaluating a project's impact on air quality, the District maintains a staff of air quality specialists and engineers highly trained in the art of assessing air quality impacts. District staff is easily accessible by email, via telephone, or in person. The District also maintains a Small Business Assistance telephone line to assist project proponents and Lead Agencies to determine if a District application or permit is required. At any time during the CEQA process, the District is available for applicants and Lead Agencies to discuss potential impacts on air quality and recommendations to reduce those impacts.

III. PROPOSED PROGRAMMATIC APPROACH

A. Overview

The objective of the programmatic approach is to provide a more efficient, responsive, and effective process for submitting requests for comments and receiving District comments for specific categories of projects early in the review process. Communicating requirements and potential design elements and mitigation measures early in the review process gives the project proponent a better opportunity and the tools to ensure the best project design possible with minimized air quality impacts.

The District envisions an easy to use system that is essentially a web-based conversion of the District's current commenting process. It will be made available to land use agencies, consultants, and project proponents. Projects will still undergo the same level of evaluation as those currently evaluated by District staff. The difference is the system will provide users with District comments immediately after the data is entered. This enables project proponents to start taking air quality impacts into consideration as early as possible, even well before approaching land use agencies with a proposal. The overall impact will be improved efficiency, project turnaround time, and effectiveness.

The system will request users to enter project-specific data. From this data, it determines if the project falls within one of the predetermined categories. If so, a detailed comment letter is generated, outlining the requirements for the project, including applicable District rules and regulations and project design elements that can be incorporated into the project to reduce impacts on air quality. If the project does not fall within the predetermined categories, the user will be informed to submit the application package to the District through e-mail or mail for evaluation by District staff.

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Based on the current SPAL, this system can be used for the following projects meeting the size limits identified below:

Housing

Single Family	152 Units
Apartments, Low Rise	220 Units
Apartments, High Rise	345 Units
Condominiums, General	270 Units
Condominiums, High Rise	335 Units
Mobile Homes	330 Units
Retirement Community	460 Units

Office

General Office Building	110,000 sq.ft.
Office Park	106,000 sq.ft.
Government (Civic Center)	57,000 sq.ft.
Government Office Building	23,000 sq.ft.
Medical Office Building	52,000 sq.ft.

Retail

Free Standing Discount Store	61,000 sq.ft.
Regional Shopping Center <57,000	11,000 sq.ft.
Discount Club Store	40,000 sq.ft.
Supermarket	9,000 sq.ft.
Convenience Market (w/o gas pumps)	2,000 sq.ft.
Convenience Market (w/gas pumps)	2,000 sq.ft.
Gasoline/Service Station	10 pumps
Quality Restaurant	20,000 sq.ft.
Restaurant (high turnover sit-down)	9,000 sq.ft.
Fast Food Restaurant	2,000 sq.ft.
Day Care Center	22,000 sq.ft.
Bulk (w/drive-through)	10,000 sq.ft.
Racquet/Health Club	44,000 sq.ft.
Hotel	200 Units
Motel	170 Units

Industrial

General Light Industry	510,000 sq.ft.
Heavy Industry	920,000 sq.ft.
Industrial Park	370,000 sq.ft.
Manufacturing	400,000 sq.ft.

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Institutional

Hospital	78,000 sq.ft.
Elementary School	1875 students
Junior High School	1680 students
High School	1325 students
Junior College (2 year)	1100 students
University/College (4 year)	716 students
Place of Worship	48,000 sq.ft.

Projects not meeting the above criteria are typically more complex, i.e. potentially requiring Environmental Impact Reports (EIR's), and will continue to be evaluated by District staff through the standard process via email and mail.

With this web-based system, the District will still continue to provide the same great level of staff support to assist anyone during any phase of the CEQA process via email, phone, or in person.

To ensure the usability, efficiency, and effectiveness of this web-based system, the District will develop and implement it in close coordination with Lead Agencies throughout the Valley.

B. Memoranda of Understanding (MOU's)

The District plans to develop and execute Memoranda of Understanding (MOU's) with Lead Agencies that wish to subscribe to this programmatic approach. This allows all requests for comments from the Lead Agencies and all comments provided by the District web-based system to be considered official. The MOU will identify the partnership between the District and the Lead Agency for utilizing this CEQA commenting programmatic approach. It will also contain the obligations such as the Lead Agency accessing the web-based system and consequently considering the comment letters generated from the web-based system as "official" District comments. As an added benefit, Lead Agencies will be able to create an account within the District web-based system. The system will keep records of the requests and comments, making it easier for the Lead Agencies to track and ensure that all requests have been addressed.

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C. Example

For efficiency, the system will only display appropriate questions based on user responses, resulting in substantially less questions. Below is an example for a request for comments for a residential development project.

The screenshot shows a web browser window with the address bar displaying <http://www.valleyair.org/Home.htm>. The browser has a single tab titled "San Joaquin Valley APCD H...". The main content area features a progress bar with three steps: "Step 1" (highlighted in blue), "Step 2", and "Step 3". Below the progress bar is the heading "Project Identification".

1. *What is the Project land-use type?*

Residential
Commercial
Industrial
Educational

2. *Number of dwelling units?*

49

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The screenshot shows a web browser window with the address bar displaying "http://www.valleyair.org/Home.htm". The browser has a single tab titled "San Joaquin Valley APCD H...". Below the browser window is a navigation bar with three buttons: "Step 1", "Step 2", and "Step 3". "Step 2" is highlighted in blue. The main content area is titled "Project Characteristics" and contains four numbered questions, each with a list of options and a selection box.

Step 1 **Step 2** **Step 3**

Project Characteristics

1. Will the project be located near any of the following:

- Within 500 feet of a freeway
- Urban roads with 100,000 vehicles/day
- Rural roads with 50,000 vehicles/day
- Within 1,000 feet of a distribution center
- Within 1,000 feet of a major service and maintenance rail yard
- A nearby port
- A nearby refinery
- Within 1,000 feet of a chrome plater facility
- Within 300 feet of a dry cleaning facility
- Within 300 feet of a large gas station (a facility throughout of 3.6 million gallons per year or greater is considered large)

Yes
No

2. Is the Project subject to a discretionary approval?

Yes
No

3. Is the project part of a larger development project?

Yes
No

4. Will the Project disturb ten (10) acres or more of land?

Yes
No

The screenshot shows a web browser window with the address bar displaying "http://www.valleyair.org/Home.htm". The browser has a single tab titled "San Joaquin Valley APCD H...". Below the browser window is a navigation bar with three buttons: "Step 1", "Step 2", and "Step 3". "Step 3" is highlighted in blue. The main content area is titled "Comment Letter" and contains a single line of text.

Step 1 **Step 2** **Step 3**

Comment Letter

Based on the information provided, the District has the following comments.

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July 17, 2014

John Smith
City of Clovis
Planning Division
1033 Fifth Street
Clovis, CA 93612

Project: Conditional Use Permit No. 12345

District CEQA Reference No: 2014xxxx

Dear Mr. Smith:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above consisting of constructing a 49-lot single family residential development project. The District offers the following comments:

1. Based on information provided to the District, project specific emissions of criteria pollutants are not expected to exceed District significance thresholds of 10 tons/year NO_x, 10 tons/year ROG, and 15 tons/year PM₁₀. Therefore, the District concludes that project specific criteria pollutant emissions would have no significant adverse impact on air quality.
2. Based on information provided to the District, at full build-out, the proposed project would not be equal to or exceed 50 residential dwelling units. Therefore, the District concludes that the proposed project is not subject to District Rule 9510 (Indirect Source Review).
3. The proposed project will be subject to Regulation VIII (Fugitive PM10 Prohibitions). Also, the proposed project may be subject to the following District Rules and Regulations, including: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project or obtain information about District permitting requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules and regulations can be found online at: www.valleyair.org/rules/1ruleslist.htm.
4. The District recommends that a copy of the District's comments be provided to the project proponent.

If you have any questions or require further information, please call District CEQA/ISR Staff at (559) 230-6000.

Sincerely,

Arnaud Marjollet
Director of Permit Services

Chay Thao
Program Manager

AM:ct

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IV. BENEFITS

The District is confident that this new approach will result in substantial benefits to everyone, from the project proponents to the consultants, the District, the public, and especially the Lead Agencies as outlined below:

- **Improved efficiency, project turnaround time, and effectiveness.** The system provides Lead Agencies with instantaneous updates and the most up-to-date information regarding design elements, mitigation measures, and any other changes to the District's commenting process. In addition, Lead Agencies will be able to store and access all requests and comments, ensuring that all requests have been addressed.
- **Improved project design.** Addressing air quality requirements early in the CEQA process will allow project proponents to better incorporate project design elements and mitigation measures into their projects along with other CEQA requirements. This will lead to an overall better project with minimized impact on air quality.
- **Improved customer service.** Providing support, information, and tools to project proponents early in the process enables them to address potential issues early, providing a better overall experience.

V. PROPOSED ACTION PLAN

A. Workshop

The District will hold workshops and group meetings with potential Lead Agencies to explain and assess the interest in this programmatic approach (starting December 2014).

B. Web System Development

If sufficient interest is expressed, the District will collaborate with interested parties and start development of the web-based system (starting winter of 2014/spring of 2015 and ongoing).

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C. MOU

The District will work with potential Lead Agencies to develop model implementation MOU's that improve effectiveness, efficiency, and project turnaround time (starting spring/summer of 2015).

The District will execute MOU's with interested potential Lead Agencies (starting summer of 2015 and ongoing).

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