

MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT

REGULATION 1, APPENDIX A – PROCEDURES FOR ENVIRONMENTAL REVIEW
(Last amended May 15, 2001)

I. Definitions and Intent

- (a) All terms and language in this section are defined as they are defined in the California Environmental Quality Act of 1970 (CEQA) as amended by the Legislature and by various legal decisions.
- (b) All deadlines and comment periods shall be consistent with CEQA and may be consolidated, where allowed, with other deadlines and comment periods (i.e. Clean Air Act Title 5 permitting process).
- (c) The intent of this section is to conform with the State of California Resources Agency CEQA Guidelines (Guidelines - Division 6, Title 14, California Administrative Code). In the event of any conflict with CEQA or the most recently adopted CEQA Guidelines any District regulation will be considered invalid only to the extent needed to resolve the conflict.
- (d) If any section or portion of these regulations is declared invalid through legal action all other sections shall remain in force.
- (e) Appeals of the actions of the Air Pollution Control Officer related to CEQA shall be heard by the Air Quality Management District Board. The District Board may delegate this authority to the Air Quality Management District Hearing Board.

II. Authority of the Air Pollution Control Officer

- (a) The Air Pollution Control Officer shall have the authority, in accordance with standards delineated by the Guidelines for implementing the California Environmental Quality Act of 1970, to make the following determination:
 - (1) Whether or not an action is a project.
 - (2) Whether or not an action is a project or a portion of a project for which another public agency has already acted as the lead agency.
 - (3) Whether or not a project is categorically exempt.
 - (4) Whether or not a project is subject to a statutory exemption.
 - (5) Whether or not a project is ministerial.
 - (6) Whether or not it can be seen with certainty that a project will not have a significant effect upon the environment.

- (7) Whether or not an agency other than the District is to be the lead agency.
- (b) These determinations are subject to review and revision upon motion made by the Air Quality Management District Board or upon request for Board Review by the Air Pollution Control Officer.

III. Determinations of the Air Pollution Control Officer

- (a) If the Air Pollution Control Officer determines that:
 - (1) the application is for a project or a portion of a project for which another public agency has already acted as the lead agency in compliance with CEQA,
 - (2) the project is categorically exempt,
 - (3) the project is ministerial, or
 - (4) it can be seen with certainty that the project will not have a significant effect on the environment

then neither a negative declaration nor an environmental impact report will be required.

- (b) If 1, 2, 3 and 4 above are not applicable then a CEQA document shall be prepared by the District. If the Air Pollution Control Officer determines that another public agency should act as lead agency and 1, 2, 3 and 4 above are not applicable, the matter shall be referred to the lead agency for compliance with CEQA.
- (c) The Air Pollution Control Officer's determination will be set forth in a written statement which shall be furnished to the applicant and made available to any members of the public upon request. A copy of said statement shall be affixed to any permit granted or denied.

IV. Hiring of Consultants

The Air Pollution Control Officer may choose to hire consultants to prepare environmental documents. If the Air Pollution Control Officer determines that a consultant will be hired the District will use the following guidelines:

These guidelines are to assist the District in creating a fair and efficient consultant selection process.

- (a) Overview: The District employs a competitive consultant selection process designed to select a consultant with the expertise, experience, available time and staff to prepare an environmental document that evaluates the environmental impacts, mitigations and alternatives at a competitive price. Although consultant selection is normally made from a list of consultants maintained by the District, or other local resource agencies, single-source procurement may also be used in some cases.

- (1) Selection From a List of Prequalified Consultants: This procedure involves reviewing an established list of consultants whose qualifications are known to the District, or other local resource agencies, prior to selection. This approach typically includes the following:
 - (A) A small group (typically 3-5) consultants are selected by the Air Pollution Control Officer from an established list of qualified consulting firms. The project applicant is permitted to submit the name of one or more consulting firms that they wish to be considered.
 - (B) Upon verification of qualifications, the consulting firms may be informally contacted to ascertain their interest and availability.
 - (C) The District prepares a Request for Proposals (RFP) and distributes copies of the RFP to the interested consultants. The RFP should contain a scope of work, a schedule for report preparation, an indication of who will be required to attend which meetings and public hearings, a breakdown of all costs for report preparation, an indication of the number and type of graphics to be provided, and a statement of information needed by the consultant prior to initiation of report preparation, including any maps, laboratory work, monitoring, reports, files and surveys.
 - (D) Following distribution of the RFP to consulting firms, the Air Pollution Control Officer may hold a presubmittal conference to assure that all respondents have a thorough understanding of the project.
 - (E) The Air Pollution Control Officer evaluates each proposal utilizing a standard evaluation criteria. The Air Pollution Control Officer may invite staff from other Responsible Agencies to participate in the evaluation process. The project applicant is also permitted to evaluate the proposals and submit comments for consideration by the Air Pollution Control Officer. In situations where a clear choice can not be made from reviewing the proposals, the Air Pollution Control Officer may invite the top two or three firms to a formal interview. Following this process, the consultant will be selected by the Air Pollution Control Officer.
- (2) Single-Source Procurement. With this approach, the District only contacts one consultant for a given project or retains the same consultant on an on-going basis. This process allows the District to maintain a long-standing relationship with a consultant who is familiar with the project or community. Single-source procurement may be used when:

- (A) An existing consultant is familiar with the project, is capable of handling the work, has a solid record of good performance and is not under contract with the project applicants;
- (B) There is only one qualified consulting firm;
- (C) A highly specialized consultant is needed;
- (D) There is not sufficient time to establish a formal search procedure; or,
- (E) Significant cost savings can be achieved by using a consultant who is already familiar with the community, the staff, the project and the procedures.

If single-source procurement is chosen, the Air Pollution Control Officer shall document his/her reasons for doing so, to avoid any discriminatory practice claims by other consultants.

- (3) All contracts with consultants shall be approved by District Legal Counsel and be consistent with standard administrative procedures.
- (4) The consultant shall not be authorized to begin work until the applicant has deposited the total contract amount with the District. Said funds shall be segregated from other moneys in a separate fund.
- (5) Compensation: Payments to the consultant may be based on monthly or less frequent billings, with documentation of tasks, personnel, hours and rates. Compensation may not exceed the following:
 - ? 60% of the contract amount upon acceptance of the Draft EIR by the District.
 - ? 25% of the contract upon acceptance of the Final EIR by the District.
 - ? 15% of the contract amount upon certification of the Final EIR by the Air Pollution Control Officer or the Air Quality Management District Board upon appeal. In the event that the District is unable to certify the EIR based on stated inadequacy of the information in the EIR, the Consultant shall revise the Final EIR if such work is within the scope of the contract. If the inadequacies are outside the scope of the contract, the 15% payment to the Consultant shall be paid.
 - ? Should contract termination occur for any other reason, the Consultant shall be paid for work authorized, performed and documented to date, not to exceed the limits in this section.

The above payment schedule is offered as a guideline. In unusual circumstances, the Air Pollution Control Officer may specify an alternative payment schedule.

V. Negative Declaration or Environmental Impact Report – Air Pollution Control Officer's Responsibility

- (a) After making a determination regarding the requirements for preparation of a negative declaration or an environmental impact report, the Air Pollution Control Officer shall:
 - (1) prepare a negative declaration or notice of exemption and file it with the Clerk of the County in which the project is proposed to be located; or
 - (2) prepare an environmental impact report; or
 - (3) obtain authorization of the Air Quality Management District Board to engage the services of an outside consultant for the purposes of preparing an environmental impact report (as outlined in section IV of this appendix).
- (b) If the District acts as the lead agency, after a draft environmental impact is completed, the Air Pollution Control Officer shall file a notice of completion with the State Clearinghouse.

VI. Consultation Regarding Environmental Impact Report

After completing the draft environmental impact report, the Air Pollution Control Officer shall consult with and obtain the comments of any public agency which has jurisdiction by law with respect to the project. The Air Pollution Control Officer may consult with any person with expertise with respect to the environmental impact involved.

VII. Maintenance of Notification List

- (a) The Air Pollution Control Officer shall maintain a special notice list containing the names and addresses of all persons requesting special notice of either (1) the filing of a negative declaration with the County Clerk, or (2) the filing of a notice of completion of an environmental impact report with the Secretary of the Resources Agency. Each person requesting special notice shall:
 - (1) Make written request for special notice to the Air Pollution Control Officer. Payment of the fees for special notice shall be made directly to the Air Pollution Control Officer. Upon payment of the required fee, the Air Pollution Control Officer shall include the applicant's name on the special notice list.
 - (2) Pay an annual fee as determined by the Air Pollution Control Officer to cover costs.

- (3) Renew such request annually on or before the first day of July, and the renewal fee shall be paid to the Air Pollution Control Officer at the time the request for special notice is renewed.
- (b) Neither the failure to give special notice when required by these procedures nor the failure to publish notice in the proper manner when required by these procedures shall affect in any way the validity or legality or the approval or disapproval of a project.

VIII. Consideration of Negative Declaration or Environmental Impact Reports

Any interested person may review the negative declaration or draft environmental impact report and may make written comments to be sent to the Air Pollution Control Officer and be made a part of the consideration of the Air Pollution Control Officer.

- (a) After giving the notice required by CEQA, the Air Pollution Control Officer may set a time, date and place for consideration of the negative declaration or draft environmental impact report and any oral comments made thereon.
- (b) If the Air Pollution Control Officer chooses to receive oral comments notice shall be given to the public of that time, date and place when (s)he will be available to receive testimony regarding the proposed negative declaration or environmental impact report.
- (c) The Air Pollution Control Officer shall send such notice of time and place of consideration to all persons who have requested special notice, to the Resources Agency of the State of California, the United States Environmental Protection Agency and the California Air Resources Board.
- (d) Any hearings relating to this section may also include members of the Air Quality Management District Board or the Air Quality Management District Hearing Board, but the decision-making authority will remain with the Air Pollution Control Officer.

IX. Consideration of Negative Declaration

Negative declarations, together with any written comments thereon, shall be transmitted to the Air Pollution Control Officer prior to the date set for his consideration.

- (a) The Air Pollution Control Officer shall consider the negative declaration and comments, if any, and either adopt or reject the negative declaration prior to deciding to approve or disapprove the project.
- (b) If the Air Pollution Control Officer decides to adopt the negative declaration, then the Air Pollution Control Officer shall proceed to approve or disapprove the project.

X. Negative Declaration Further Action

- (a) The Air Pollution Control Officer shall file a copy of the negative declaration and notice of determination with the Clerk of the County in which the project would be located. After the determination by the Air Pollution Control Officer to approve the project, the determination shall become final.
- (b) After complying with all of the requirements of this procedure and CEQA, the Air Pollution Control Officer shall approve or disapprove the application for an authority to construct or permit to operate in accordance with the rules and regulations of the District.

XI. Evaluation of Proposed Environmental Impact Report and Comments

After the period for considering comments on a draft environmental impact report has expired, the Air Pollution Control Officer (or consultant) shall prepare a final environmental impact report.

XII. Presentation of Environmental Impact Reports

The Air Pollution Control Officer shall complete the final environmental impact report or shall receive from the consultant the final environmental impact report prior to his approval or disapproval of the project. The Air Pollution Control Officer shall certify the final environmental impact report and consider its contents before making a decision on a project.

XIII. Environmental Impact Report - Further Action

The Air Pollution Control officer shall file a notice of determination with the Clerk or the County in which the project is located. Such notice shall include:

- (a) whether an environmental impact report has been prepared pursuant to the provisions of CEQA, and the Air Pollution Control Officer's approval or disapproval of the report;
- (b) the Air Pollution Control Officer's approval or disapproval of the project; and
- (c) the determination of the Air Pollution Control Officer of whether the project will or will not have a significant effect upon the environment.

XIV. Air Pollution Control Officer's Decision on Project

- (a) Before making a decision on the application, the Air Pollution Control Officer shall consider the negative declaration or environmental impact report prepared pursuant to this procedure.
- (b) If the application is for a project or portion of a project for which another public agency has acted as the lead agency, the Air Pollution Control Officer shall consider the lead agency's environmental impact report or negative declaration and shall certify that (s)he has reviewed and considered the information contained in them before acting upon or approving the project.

- (c) After complying with all of the requirements of this procedure and CEQA, the Air Pollution Control Officer shall approve or disapprove the application for an authority to construct or permit to operate in accordance with the rules and regulations of the District.

[Amended, May 15, 2001]