

State Water Resources Control Board

TO: Thomas Howard
Executive Director
EXECUTIVE OFFICE

FROM: 
Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

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SUBJECT: PROCESSING APPLICATIONS FOR DEVELOPMENT PERMITS UNDER THE PERMIT STREAMLINING ACT

The Permit Streamlining Act¹ (Act) establishes time limits for public agencies' review and approval of applications for development projects. Its purpose is to ensure a clear understanding of the requirements applicants must meet and to expedite public agency decisions concerning development projects. These decisions may include waste discharge requirements, water quality certifications, and various water rights approvals.

With respect to development projects, the Act:

- establishes processes and timelines for deeming complete certain applications;
- specifies the requirements for a public agency to request additional information to complete an application;
- prescribes the timelines for acting on an application; and
- allows for default approvals in certain instances.

As a result, staff should be aware of when the Act applies to actions of the State Water Resources Control Board and the California Regional Water Quality Control Boards (collective, Water Boards) and the Act's requirements.

Scope of the Act

Under the Act, "public agency" includes any state or local agency.² A "development project" is any project undertaken for the purpose of development. It does not include permits to operate or any ministerial projects proposed to be carried out or approved by public agencies.³ "Development" is defined broadly and includes: (1) the placement or erection of any solid material or structure; (2) discharge or disposal of any dredged material; (3) grading, removing, dredging, mining, or extraction of any materials; (4) change in the intensity of use of water, or

¹ Gov. Code, § 65920, et seq.

² *Id.*, § 65932.

³ *Id.*, § 65928.

access thereto; (5) the removal or harvesting of major vegetation other than for agricultural purposes, including timber operations in accordance with a timber harvest plan submitted pursuant to the Z'berg-Nejedly Forest Practice Act.⁴

Review of Applications

The Act requires all public agencies to compile lists which “specify in detail the information” which is required from applicants for development projects.⁵ The information must include the criteria which the public agency will apply in determining completeness of the application.⁶ Copies of this information, including a statement that the application is for a development permit, must be made available to all permit applicants.⁷ In addition, all public agencies are required to notify applicants for development permits of the time limits established by the Act for the review and approval of development permits and, of any public notice distribution requirements under applicable provisions of law.⁸

30 Days to Determine Whether an Application is Complete and Process for Obtaining Additional Information

Within 30 calendar days of receipt of an application, the Act requires the public agency to determine in writing whether the application is complete and immediately transmit the determination to the applicant.⁹ If the determination is not made within the 30-day time frame and the application includes a statement that it is an application for a development permit, the application is deemed complete. If written notice is provided within 30 days of an incomplete application and the application is resubmitted, a new 30-day period for review begins. If the application is determined to be incomplete, during this second 30-day review period, the public agency must specify in detail the parts of the application which are incomplete and the information which is needed in order to complete the application.¹⁰

After receipt of any resubmittal, the agency again has 30 days to make a written determination whether the application is complete and immediately transmit it to the applicant.¹¹ If the required determination is not made within the 30-day period, the application is deemed complete. This is true whether or not the additional materials are sufficient to make the application complete.¹²

⁴ *Id.*, § 65927.

⁵ *Id.*, § 65940, subd. (a).

⁶ *Id.*, § 65941, subd. (a) A public agency cannot require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application or to otherwise require proof of compliance with the California Environmental Quality Act (CEQA) as a prerequisite to a permit application being deemed complete.

⁷ *Id.*, § 65940, subd. (a).

⁸ *Id.*, § 65941.5.

⁹ *Id.*, § 65943, subd. (a).

¹⁰ *Ibid.*

¹¹ Once an application has been accepted by a public agency as complete, it cannot later determine that the application is incomplete. (*Chino MHC, LP v. City of Chino* (2012) 210 Cal.App.4th 1049, 1077-1078.)

¹² *Orsi v. City Council of the City of Salinas* (1990) 219 Cal.App.3d 1576, 1586.

The 30-day time limits discussed above may be extended by mutual agreement of the applicant and the public agency.¹³ If the public agency has made the required determinations and provided the required notices, the applicant's failure to submit complete or adequate information in its application or in any subsequent requests for additional information may constitute grounds for disapproving an application for a development project.¹⁴

An Applicant's Appeal Rights Concerning Determinations of Incompleteness

The Act requires an appeal process for an applicant to contest whether a public agency appropriately determined an application for a development project was incomplete.¹⁵ For certain environmental agencies, including the Water Boards, the Act specifies that appeal process. If an environmental agency within the California Environmental Protection Agency determines that a permit application for a development project is incomplete, the applicant may appeal the decision in writing to the Secretary for Environmental Protection.¹⁶ If the Secretary fails to make a final written determination on the appeal within 60 days after receipt of the appeal, the application with submitted material is deemed complete. Like the 30-day time limits, the 60-day review period may be extended by agreement of the applicant and the public agency.

Requesting Additional Information

Even if the time limits have run, a public agency can still request additional information from an applicant.¹⁷ After an application has been received and accepted as complete, a public agency cannot request of the applicant any new or additional information not specified in the list prepared by the public agency. The public agency can, however, request that the applicant clarify, amplify, correct, or supplement the information required in the application.¹⁸ Additionally, the Act is not to be construed as limiting the ability of a public agency to request and obtain information which may be required to comply with the provisions of CEQA.¹⁹ For example, when a public agency is lead agency for purposes of CEQA, the agency can request the applicant to provide any additional information which is needed to prepare an adequate environmental impact report (EIR). It should be emphasized that requests for additional information do not extend the deadlines for final agency action on the application.

Approval of Applications

The date an application is accepted as or deemed complete under the Act is important, because the time limits for final agency action on the application generally run from this date. Any public agency that is the lead agency for a development project shall approve or disapprove the project within:

- 180 days of the lead agency's certification of the EIR, if the EIR is prepared pursuant to section 21100 or 21151 of the Public Resources Code;

¹³ *Id.*, § 65943, subd. (d).

¹⁴ Gov. Code § 65956, subd. (c); see also *Chino MHC, LP v. City of Chino*, *supra*, 210 Cal.App.4th at p. 1077.

¹⁵ Gov. Code, § 65943, subd. (c).

¹⁶ *Id.* § 65943.5, subd. (a); Cal. Code Regs., tit. 27, § 10313.

¹⁷ *Id.*, § 65944, subd. (a); Wat. Code, §§ 13267, 13383.

¹⁸ Gov. Code, § 65944, subd. (a).

¹⁹ *Id.*, subd. (c).

- 60 days of the lead agency's adoption of the negative declaration or mitigated negative declaration; or,
- 60 days of the lead agency's determination that the project is exempt from CEQA.²⁰

If an extension of time pursuant to section 21100.2 or 21151.5 of the Public Resources Code to complete and certify the EIR has been granted, the lead agency must approve or disapprove the project within 90 days after certification of the EIR.²¹ Similarly, if a combined EIR/environmental impact statement (EIS) is being prepared for a development project pursuant to section 21083.6 of the Public Resources Code, the lead agency must approve or disapprove the project within 90 days after the EIR/EIS has been completed and adopted.²²

Any public agency that is a responsible agency for a development project shall approve or disapprove the project within whichever of the following periods of time is longer:

- 180 days from the lead agency's approval of the project; or,
- 180 days from the date the application has been accepted as or deemed complete by that responsible agency.²³

At the time a decision by a lead agency to disapprove a development project becomes final, applications for that project which are filed with responsible agencies shall be deemed withdrawn.²⁴

Similar to the time limits for the review of applications, the time limits for approval of applications may be extended by mutual agreement between the applicant and the public agency. However, there may only be one such extension and only for a period not to exceed 90 days from the date of the applicable decision deadline.²⁵ The Act's time limits are mandatory; consequently, if applicable notice and hearing requirements have been satisfied, the failure of a public agency to comply with the time limits renders the application approved by operation of law.²⁶

No Development Project is Deemed Approved Without a CEQA Decision

A CEQA approval or a determination that a project is exempt from CEQA triggers the time limits for the Act's provisions to deem approved a development project. Unlike the Act, CEQA does not contain a "deemed approval" provision for cases where a public agency fails to comply with CEQA's time lines for environmental determinations.²⁷ As a result, there must be a CEQA decision prior to commencing the Act's time limits for acting on a complete application.

²⁰ *Id.*, § 65950, subd. (a). For purposes of this section, "lead agency" and "negative declaration" have the same meanings as they do in CEQA.

²¹ *Id.*, § 65950.1.

²² *Id.*, § 65951.

²³ *Id.*, § 65956, subd. (a).

²⁴ *Id.*, subd. (b).

²⁵ *Id.*, § 65957. This one-time, ninety-day extension is in addition to any extension of time made pursuant to sections 21100.2 or 21151.5 of the Public Resources Code.

²⁶ *Palmer v. City of Ojai* (1986) 178 Cal.App.3d 280, 293; see also *Orsi v. City Council, supra*, 219 Cal.App.3d at p. 1584, fn. 5 (responding to the *Palmer* decision, the Legislature amended section 65956 in 1987 to preclude default approval if public notice has not been provided as required by law).

²⁷ *Eller Media Co. v. City of Los Angeles* (2001) 87 Cal.App.4th 1217, 1221.

Limitation on the Act's Approval Deadlines if Federal Law Requires Longer Times, if a Water Rights Change Petition is Involved, or if a Water Rights Application Has Been Protested

None of the Act's time limits for the approval of applications apply in the event that federal statutes or regulations require time schedules which exceed these time limits.²⁸ Similarly the time limits for approval of applications do not apply to applications to appropriate water where such applications have been protested pursuant to chapter 4 (commencing with section 1330) of part 2 of division 2 of the Water Code, or to petitions for changes pursuant to chapter 10 (commencing with section 1700) of part 2 of division 2 of the Water Code.²⁹

Public Notice Requirements

For a development project to be deemed approved, applicable public notice requirements must have been satisfied.³⁰ For example, a water quality certification cannot be issued unless the application for certification was publicly noticed.³¹

The Act includes provisions that allow an applicant to compel a public agency to provide notice of the development project, hold a hearing on the development project, or both. If any provision of law requires a public agency to provide public notice of the development project and/or to hold a public hearing on the development project and the public agency has failed to do so at least 60 days prior to the expiration of the applicable time limits, the applicant can seek to compel the agency to provide the public notice and/or hold the hearing.³²

Alternatively, the applicant may elect to provide any public notice required by law if it has provided seven days advance notice to the public agency and even then, no earlier than 60 days from the expiration of the Act's appropriate time limits.³³ With respect to actions by the Water Boards, the applicant may submit an appeal in writing to the Secretary for Environmental Protection for a determination regarding the failure to take timely action on the issuance or denial of the permit in accordance with the Act's time limits.³⁴ This appeal may be filed prior to an applicant providing the seven days advance notice of its intent to provide public notice. If an

²⁸ Gov. Code., § 65954.

²⁹ *Id.*, § 65955. Also, during a year declared by the State Water Board or the Department of Water Resources to be a critically dry year or during a drought emergency declared by the Governor pursuant to the California Emergency Services Act (Gov. Code, § 8550 et seq.), the Act's time limits shall not apply to applications to appropriate water pursuant to part 2 (commencing with section 1200) of division 2 of, to petitions for change pursuant to chapter 10 (commencing with section 1700) of part 2 of division 2 of, or to petitions for certification pursuant to section 13160 of the Water Code, for projects involving the diversion or use of water. (*Id.*, § 65922.1.)

³⁰ *Id.*, § 65956.

³¹ Cal. Code Regs., tit. 23, § 3858, subd. (a).

³² Gov. Code, § 65956, subd. (a). In order to compel the notice or hearing, the applicant would need to file a mandamus action pursuant to Code of Civil Procedure section 1085.

³³ Gov. Code, § 65956, subd. (b). If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided and the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

³⁴ *Id.*, § 65956.5, subd. (a) & (c).

applicant provides public notice pursuant to provisions of the Act, the public agency's deadline for action under the Act shall be extended to 60 days after the applicant provides public notice.³⁵

Applications Deemed Approved Under the Act

If an application for a development project is deemed approved, the permit bears all of the legal entitlements of a permit issued by the public agency and is the specific permit described in the application.³⁶

Questions about the Act and the Water Boards' Programs

1. What happens if an application is deemed complete?

Once an application is either determined to be complete or deemed complete by operation of law, the public agency can only request information to clarify, amplify, correct, or otherwise supplement the information submitted to date. The public agency may not require any new or additional information which was not specified in the list of items required to make an application complete.³⁷ This limitation does not apply to water right applications and petitions³⁸ or NPDES permit applications.³⁹

Additionally, Water Code section 13267 broadly authorizes the Water Boards to investigate water quality. In conducting an investigation, the Water Boards can require any person discharging or proposing to discharge waste that could affect water quality to furnish technical or monitoring program reports.

Water Code section 13267 authorizes the water boards to request additional information from a discharger both before and after a report is deemed complete under the Act. For example, before accepting a report as complete, a Water Board can inform the discharger that specified information included in the Form 200 will be required from the discharger at a future date before final action is taken on the report.⁴⁰ After a report is deemed complete, the Water Board can still request that the discharger submit technical or monitoring program reports, which clarify, amplify, correct, or otherwise supplement the information required in the Form 200. However, a request for reports under Water Code section 13267 would not extend the deadlines for final agency action.

³⁵ *Id.*, § 65956, subd. (b).

³⁶ *Ciani v. San Diego Trust & Savings Bank* (1991) 233 Cal.App.3d 1604, 1613-1614.

³⁷ Gov. Code, § 65944, subd. (a). For example, the State Water Board's regulations contain a list for a complete water quality certification application. (Cal. Code Regs., tit. 23, § 3855.)

³⁸ Wat. Code, §§ 1275, 1701.3.

³⁹ The Act's applicability to NPDES permits is discussed further below.

⁴⁰ See Gov. Code, § 65944, subd. (b).

2. *Do the Act's requirements apply to reports of waste discharge submitted for modification of waste discharge requirements or applications for amendments to water quality certifications?*

A discharger proposing to make a material change in the "character, location, or volume of" a discharge must file a new report of waste discharge under Water Code section 13260, subdivision (c). State Water Board regulations provide guidance on the types of changes in a discharge which are considered "material."⁴¹ Material changes include: a significant change in disposal method, significant change in disposal area, and an increase in flow beyond that specified in waste discharge requirements. Material changes in the character of a discharge include the "addition of a major industrial waste discharge to a discharge of essentially domestic sewage or the addition of a new process or product by an industrial facility, which results in a change in the character of the waste."⁴²

The time constraints of the Act would apply to a report of waste discharge for a material change if the change involves new construction, rather than solely a change in operation. Many reports of waste discharge which are filed as a result of a proposed material change involve only a change in operation. Therefore, they would not be subject to the Act.

3. *Do the Act's requirements apply to reports of waste discharge submitted in application for new NPDES permits and modification or renewal of existing NPDES permits?*

Applications for NPDES permits filed pursuant to chapter 5.5 (commencing with section 13370) of division 7 of the Water Code are not subject to the time limits for review and approval specified in the Act. This applies to applications for new NPDES permits as well as for modification and reissuance of existing permits.

Chapter 5.5 authorizes the state to regulate point source discharges of pollutants to surface waters of the United States in accordance with the requirements of the Clean Water Act⁴³ and its implementing federal regulations.⁴⁴ Under chapter 5.5, persons discharging or proposing to discharge pollutants to surface waters must file a report of waste discharge in compliance with Water Code section 13260. For point source discharges, a report of waste discharge is equivalent to an NPDES permit application.⁴⁵ Water Code section 13260 applies to point source discharges to the extent that the section is consistent with chapter 5.5 and federal requirements implementing the Clean Water Act.⁴⁶ The provisions of chapter 5.5 prevail over any provisions of division 7 of the Water Code to the extent of any inconsistency.

Under chapter 5.5 the Water Boards must, as required or authorized by the Clean Water Act, issue waste discharge requirements which apply and ensure compliance with all applicable

⁴¹ Cal. Code Regs., tit. 23, § 2210. Similarly, the U.S. Army Corps of Engineers' regulations along with various regulatory guidance letters (RGLs) provide some guidance on what necessarily requires a "modification" of a Clean Water Act section 404 permit. (See 33 C.F.R. § 325.7.)

⁴² Cal. Code Regs., tit. 23, § 2210.

⁴³ 33 U.S.C. § 1251, et seq.

⁴⁴ See Wat. Code, §§ 13370, 13372.

⁴⁵ *Id.*, § 13374.

⁴⁶ *Id.*, § 13372.

provisions of the Clean Water Act.⁴⁷ Reports of waste discharge for point source discharges to navigable waters must be filed and processed in accordance with the applicable federal regulations governing the NPDES permit program.⁴⁸

Federal regulations governing the NPDES permit program do not impose time constraints, applicable to state permit programs, on either the review or the approval of applications for new, modified, or reissued permits. In fact, the regulations prohibit the processing of a permit until the applicant has fully complied with the application requirements for the permit.⁴⁹ The regulations specify in detail the information, including the application format which must be submitted by an applicant for an NPDES permit.⁵⁰ Federal regulations also prohibit the issuance of a permit before receipt of a complete application. An application is deemed complete “when the [authorized representative of the NPDES permitting agency] receives an application form and any supplemental information which are completed to his or her satisfaction.”⁵¹ The procedural requirements of the Act, which are applicable to some reports of waste discharge filed under Water Code Section 13260, are inconsistent with the applicable federal requirements for processing and issuing NPDES permits. Therefore, the federal regulations would prevail.⁵²

4. *What does it mean for a project to be “deemed” approved?*

A project is “deemed approved” if the lead agency or a responsible agency fails to act to approve or disapprove the project within the statutory time limits set forth in the Act.⁵³ A project which is deemed approved is approved by operation of law, rather than by any affirmative action by the lead agency or responsible agency.⁵⁴ As discussed above, if a development project is deemed approved, the permit bears all of the legal entitlements of a permit issued by the public agency and the permit will be for the specific project described in the application.

When a report of waste discharge is deemed approved under the Act, the discharger can commence discharging waste as described in the report of waste discharge.⁵⁵ However, the discharger can discharge waste only until waste discharge requirements are adopted, and the discharger cannot make any material changes in the discharge, as described in the original report, without filing a new report of waste discharge.⁵⁶

For waste discharges not subject to the Clean Water Act’s NPDES program, the Porter-Cologne Water Quality Control Act also contains a provision allowing a discharger to commence

⁴⁷ *Id.*, § 13377.

⁴⁸ Cal. Code Regs., tit. 23, § 2235.1.

⁴⁹ 40 C.F.R. § 124.3(a)(2).

⁵⁰ *Id.*, § 122.21.

⁵¹ *Id.*, § 122.21(e).

⁵² Gov. Code, § 65954; Wat. Code, §§ 13370, 13372, 13377; see also Cal. Code Regs., tit. 23, § 2208, subd. (c) (reports of waste discharge filed under chapter 5.5 are not subject to the time limits for approval specified in the Act).

⁵³ Gov. Code, § 65956, subd. (b).

⁵⁴ See *Palmer v. City of Ojai*, *supra*, 178 Cal.App.3d 280.

⁵⁵ Cal. Code Regs., tit. 23, § 2208, subd. (a).

⁵⁶ *Ibid.*; see also Wat. Code, §§ 13260 & 13263.

discharging sooner than the dates specified in the Act and prior to the issuance of waste discharge requirements or a waiver. Water Code section 13264 allows certain waste discharges to begin if (i) the waste to be discharged does not create or threaten to create a condition of pollution or nuisance, (ii) the person has submitted the necessary report of waste discharge and (iii) various time lines have expired.⁵⁷ Unlike the Act, the provisions of Water Code section 13264 apply to more than just development projects and are not a “deemed approved” permit.

5. *Do the Act’s requirements extend otherwise applicable federal time limits, such as the timeline for processing water quality certifications for U.S. Army Corps of Engineers Clean Water Act section 404 permits?*

Just as the Act’s time limits cannot shorten any required federal timelines, the Act’s time limits cannot extend federal timelines either. For example, the U.S. Army Corps of Engineers’ regulations for issuing dredged or fill materials permits generally assume a state will issue a water quality certification within 60 days of the request for certification.⁵⁸ Failing to process a certification within 60 days may result in the Corps deeming the certification waived, unless there has been a prior arrangement to extend the deadline. The longer time limits provided in the Act do not override the Corps’ regulations. As such, Water Board staff must always be sure to satisfy the timelines and processing requirements of the Act, as well as any more stringent federal timelines.

cc: Jonathan Bishop, EXEC
Caren Trgovcich, EXEC
Victoria Whitney, DWQ
Barbara Evoy, DWR
Regional Water Board Executive Officers
and Assistant Executive Officers
OCC Attorneys

⁵⁷ Wat. Code, § 13264, subd. (a)(2)(A)-(C).

⁵⁸ 33 C.F.R. § 325.2(b)(ii). The Corps’ district engineers have the authority to extend or shorten the 60-day timeline.