



DATE: April 22, 2004

TO: Management Committee Representatives

FROM: C.3 Legal Work Group
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SUBJECT: Guidance for Implementation of Permit Provision C.3.m.

Requirements of Provision C.3.m.

Provision C.3.m requires that when the Dischargers (i.e., cities, towns, County and the Flood Control District) conduct environmental review of projects in their jurisdiction, they must “evaluate water quality effects and identify appropriate mitigation measures.”

Provision C.3.m is to be implemented by **May 15, 2004**.

The provision offers, as examples, 10 questions that may be used to “evaluate increased pollutants and flows from the proposed project...”

Comparison of C.3.m Requirements to Current Practice

When reviewing projects for compliance with the California Environmental Quality Act (CEQA), Contra Costa municipalities use the checklist that is Appendix G in the current *CEQA Guidelines* or their own similar checklist adapted from this source.

The *Governor’s Office of Planning and Research (OPR) publish the Guidelines*. The *Guidelines* are extensively cited in case law pertaining to CEQA and are generally considered authoritative guidance regarding the application of CEQA.

OPR made major revisions to the *CEQA Guidelines* and the checklist in 1998. The 1998 revisions explicitly incorporated potential impacts of polluted runoff in response to the 1987 amendments to the Clean Water Act and the implementation of stormwater pollution prevention programs. In addition, the 1998 revisions to the checklist specifically aimed to align the application of CEQA with Federal and state environmental laws, including those that protect water quality.

Table 1 below compares questions in the 1998 checklist to the 10 questions that the RWQCB proposed (as examples) in Provision C.3.m. As Table 1 shows, some of the example questions suggested by the RWQCB elaborate on the questions formulated by the Governor's Office of Planning and Research. Some RWQCB questions simply duplicate the OPR questions. In other cases, the OPR questions are more precise and detailed than the RWQCB's example questions.

Table 1. Comparison of Checklist Questions

Governor's Office of Planning and Research Questions (Appendix G to CEQA Guidelines)	Parallel Regional Water Quality Control Board Questions (examples listed in Provision C.3.m.)
VIII.a) Would the project violate any water quality standards or waste discharge requirements?	vi. Is the project tributary to an already impaired water body, as listed on the Clean Water Act Section 303(d) list? If so, will it result in an increase in any pollutant for which the water body is already impaired? ix. Will the proposed project cause or contribute to an exceedance of applicable surface or groundwater receiving water quality objectives or degradation of beneficial uses?
VIII. c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	v. Would the proposed project result in increased erosion in the watershed?
VIII. d) Will the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	iii. Would the proposed project result in increased impervious surfaces and associated increased runoff? iv. Would the proposed project create a significant adverse environmental impact to drainage patterns due to changes in runoff flow rates or volumes?
VIII. e) Would the project create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	i. Would the proposed project result in an increase in pollutant discharges to receiving waters? Consider water quality parameters such as temperature, dissolved oxygen, turbidity and other typical stormwater pollutants (e.g., heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances, and trash).
VIII. f) Would the project otherwise substantially degrade water quality?	ii. Would the project result in significant alteration of receiving water quality during or following construction? viii. Would the proposed project have a potentially significant adverse impact on ground water quality? vii. Would the proposed project have a potentially significant environmental impact on surface water quality, to marine, fresh, or wetland waters?
IV. b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or the US Fish and Wildlife Service?	x. Will the project impact aquatic, wetland, or riparian habitat?

Evaluating Water Quality Effects During Environmental Review of Projects

Municipal staff could use either set of questions, with equal effectiveness, to *identify* potential water-quality impacts of a proposed project. However, to prepare an initial study, staff must also *evaluate the significance* of potential impacts.

In preparing an Initial Study, municipal staffs use their professional judgment and available information to determine whether each impact is potentially significant. Staff may also determine whether mitigation measures already incorporated into the project will reduce impacts to an insignificant level.

In applying thresholds, CEQA strongly encourages agencies to use standards set by Federal and state agencies. *CEQA Guidelines* §15064 defines a “standard” as a standard of general application that is all of the following:

- A quantitative, qualitative, or performance requirement, found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;
- Adopted for the purpose of environmental protection;
- Adopted by a public agency through a public review process to implement, interpret or make specific the law enforced or administered by the public agency;
- One that governs the same environmental effect with which the change in the environment is impacting; and,
- One that governs within the jurisdiction where the project is to be located.

According to the *CEQA Guidelines*, a change in the environment is not significant if the change complies with the standard that meets this definition.

The C.3 provisions meet the CEQA definition of a “standard” and can be applied during CEQA review when considering a project’s impacts related to urban runoff pollutants and increased runoff flows. Analysis of potential cumulative impacts of increased pollutants or increased runoff flows are likewise covered by the C.3 provisions, because the RWQCB’s urban runoff requirements are intended to address the cumulative effects of urban runoff discharges to receiving waters.

In general, the criteria that an agency uses to determine the potential significance of pollutant sources should align with criteria the same agency applies in its urban runoff pollution-prevention program. For example, the municipalities require construction-phase Storm Water Pollution Prevention Plans (SWPPPs) when more than one acre of area is disturbed and require certain industrial and commercial

sites to implement pollution-prevention measures. Similarly, the new C.3 provisions should be aligned with thresholds of significance for the long-term stormwater-related impacts of new development.

In determining whether mitigations incorporated into the project reduce potential impacts to a level of insignificance, staff should use the “maximum extent practicable” standard as elaborated in the Stormwater Management Plan and Performance Standards.

Conclusion

The municipalities can comply with Provision C.3.m by:

- Using their existing CEQA checklist.
- Implementing the C.3 requirements through changes to their planning and zoning review process.
- These changes can be made according to the schedule provided in the permit.

Next Steps

The Contra Costa Clean Water Program’s forthcoming *Stormwater C.3 Guidebook* will include detailed guidance for incorporating the C.3 provisions into the planning and zoning review process. Chapter Four of the guidebook will address, in further detail, how C.3 review can be coordinated with CEQA review.

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