

Chapter 7

Permit Evaluations

Overview

Introduction DPR’s functional equivalency certification, and the regulations that were adopted to implement it, require the program to include, among other things, guidelines for the orderly evaluation of proposed activities and the preparation of the plan (permit) in a manner consistent with the environmental purposes of the regulatory program. Title 3, CCR sections 6420 through 6444 contains the requirements for the permit evaluation program.

Additional information For a complete discussion on *Environmental Impact Report Functional Equivalency*, see Chapter 3.

Purpose The purposes for our permitting process are to:

- Facilitate governmental and/or public review of the proposed application;
- Provide conditions to mitigate problems or hazards associated with the proposed application; and
- Ensure that alternatives are considered when there are unmitigated adverse environmental impacts.

Criteria for treatment It is not intended that the CAC make technical judgments concerning the validity of particular thresholds or criteria, nor require that the insect pest level exceed the criteria. It is expected that the CAC review discrepancies with the permit applicant (grower) and his/her PCA.

In this chapter This chapter contains the following topics:

Section	Topic	See Page
7.1	EIR Functional Equivalency Evaluation Requirements	7-2
7.2	Evaluating the Permit	7-8
7.3	Reviewing and Evaluating the Notice of Intent	7-12

Section 7.1

EIR Functional Equivalency Evaluation Requirements

Introduction Public Resources Code section 21080.5 established requirements that the permit process must meet in order to comply with CEQA's EIR functional equivalency. This section outlines the steps that must be taken to properly consider the potential environmental impacts of the proposed restricted materials permit.

Requirements diagrammed These requirements are diagrammed in the chart *Overview of the Pesticide Permit Consideration Process Under Functional Equivalency Certification (Chart)* located at the end of this section.

Step 1 -- Hazard identification Identify the hazards of the pesticide(s) to be used. Pesticide labeling, DPR risk characterization documents, other available information, and experience should all be used (3 CCR section 6432). A pesticide may have more than one identifiable hazard. In virtually all cases, there will be one or more identified hazards to some element of the public or environment.

Step 2 -- Identify sensitive sites Determine if an element of the public or environment that could be adversely impacted by the particular hazard (sensitive site) is present and near enough to the treatment site to possibly be impacted. Runoff, leaching, and other off-site movement that can cause adverse impacts a considerable distance from the treatment site must be considered, as well as drift. People not involved in the application that may be exposed should always be considered a sensitive site. Be aware that sensitive sites may vary to some extent from pesticide to pesticide based on the specific hazards of the particular pesticide. Title 3, CCR section 6428 requires the permit applicant to include sensitive site information on the permit application.

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EIR Functional Equivalency Evaluation Requirements,

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Step 3 -- Determine likelihood of adverse impact

If there is a sensitive site near the treatment area, the CAC should presume that there is a likelihood, or at least the potential, of substantial adverse environmental impacts. However, there may be data to support that it is not likely and the presumption can be rebutted.
(Reference: *3 CCR section 6432*).

Step 4 -- Existing mitigation

Determine if regulations or pesticide product labeling adequately mitigate the hazard or prohibit the application. If the hazard is addressed by requirements already in place, there may no longer be a likelihood of substantial adverse environmental impacts and therefore, no need for further mitigation. The permit may be issued. Permits are automatically conditioned upon compliance with the laws and regulations (*FAC section 14007*); duplication in permit conditions is not recommended. However, providing pertinent laws and regulations in the form of information is often desirable. It is also not necessary to duplicate labeling requirements as permit conditions, since pesticide use must not be in conflict with labeling (*FAC section 12973*).

For some pesticides, specific buffer distances are cited in the regulations, labeling, or recommended permit conditions. If not, the judgment of the CAC must be used.

Step 5 -- Additional mitigation

Title 3, CCR section 6426 requires the permit applicant (grower) and his/her pest control adviser to consider **mitigation measures** to reduce the risks of the use of a restricted material before applying for a permit. While this specific requirement is directed at agricultural use, the general requirement to consider mitigation measures applies to all permits. To determine compliance with this requirement, the CAC should ask the permit applicant to identify the mitigation measures that were considered and document his/her response. If the applicant acknowledges that they did not consider mitigation, the CAC should refuse the permit at this time and direct them to comply with section 6426.

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EIR Functional Equivalency Evaluation Requirements,

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Step 5 -- Additional mitigation (continued)

Determine if there are any additional measures that would further mitigate the hazard. If there are, evaluate if they are reasonable, practical, and effective. If they are feasible, the CAC may issue the permit, conditioned upon use of those additional feasible mitigation measures. It is DPR's longstanding policy adopted at the initial granting of functional equivalency to consider and apply feasible mitigation measures before requiring that the CAC consider alternatives. However, this does not preclude the CAC from suggesting, or the user from considering, alternatives at any point in the permit process.

Step 6 -- Alternatives

Title 3, CCR section 6426 requires the permit applicant (grower) and his/her pest control adviser to consider **alternatives** to the use of a restricted material before applying for a permit. While this specific requirement is directed at agricultural use, the general requirement to consider alternatives applies to all permits. To determine compliance with this requirement, the CAC should ask the permit applicant to identify the alternatives that were considered and document his/her response. If the applicant acknowledges that they did not consider alternatives, the CAC should refuse the permit at this time and direct them to comply with section 6426.

If none of the potential mitigation measures considered in Step 5 are feasible and a likelihood of significant adverse environmental impact remains, it means the CAC must now consider alternatives. If there is a feasible alternative, the permit must be denied and the alternative used [FAC section 14006.5 reference to FAC section 12825(c)]. The alternative may be a non-pesticide procedure, a non-restricted material, or other permit material. If it is another permit material, it means the CAC returns to Step 1 and begins the process all over again with that alternative pesticide.

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EIR Functional Equivalency Evaluation Requirements,

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**Step 7 -- Risk
benefit analysis**

If none of the alternatives are feasible, the CAC must decide whether or not the pesticide has demonstrated “serious uncontrollable” adverse environmental effects [FAC section 14006.5 reference to FAC section 12825(a)].

If the CAC encounters a situation which he/she believes may involve a serious uncontrollable adverse effect, the CAC should hold off issuing the permit and consult the Enforcement Branch Liaison assigned to their county. This situation may indicate a need for reevaluation by DPR’s Registration Branch.

If the CAC has reached this point in the permit consideration process, it means that the pesticide has been found:

1. To have hazards that pose substantial adverse environmental effects that;
2. Cannot be effectively prevented through mitigation, but;
3. There is no feasible alternative; and
4. These potential effects may have serious uncontrollable adverse effects.

To issue the permit, the CAC must address the question, “Are the benefits received from the use greater than the public risk or environmental detriment [FAC section 14006.5 reference to FAC section 12825(b)]?” If you cannot answer “yes” to this ultimate question, the permit must be denied.

In short, the benefits of the mitigated use must outweigh the public/environmental risk before a permit can be issued. This is usually a somewhat subjective question further complicated by the fact that often the benefits accrue to one person or firm, while the risk is borne by another group or thing.

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EIR Functional Equivalency Evaluation Requirements, Continued

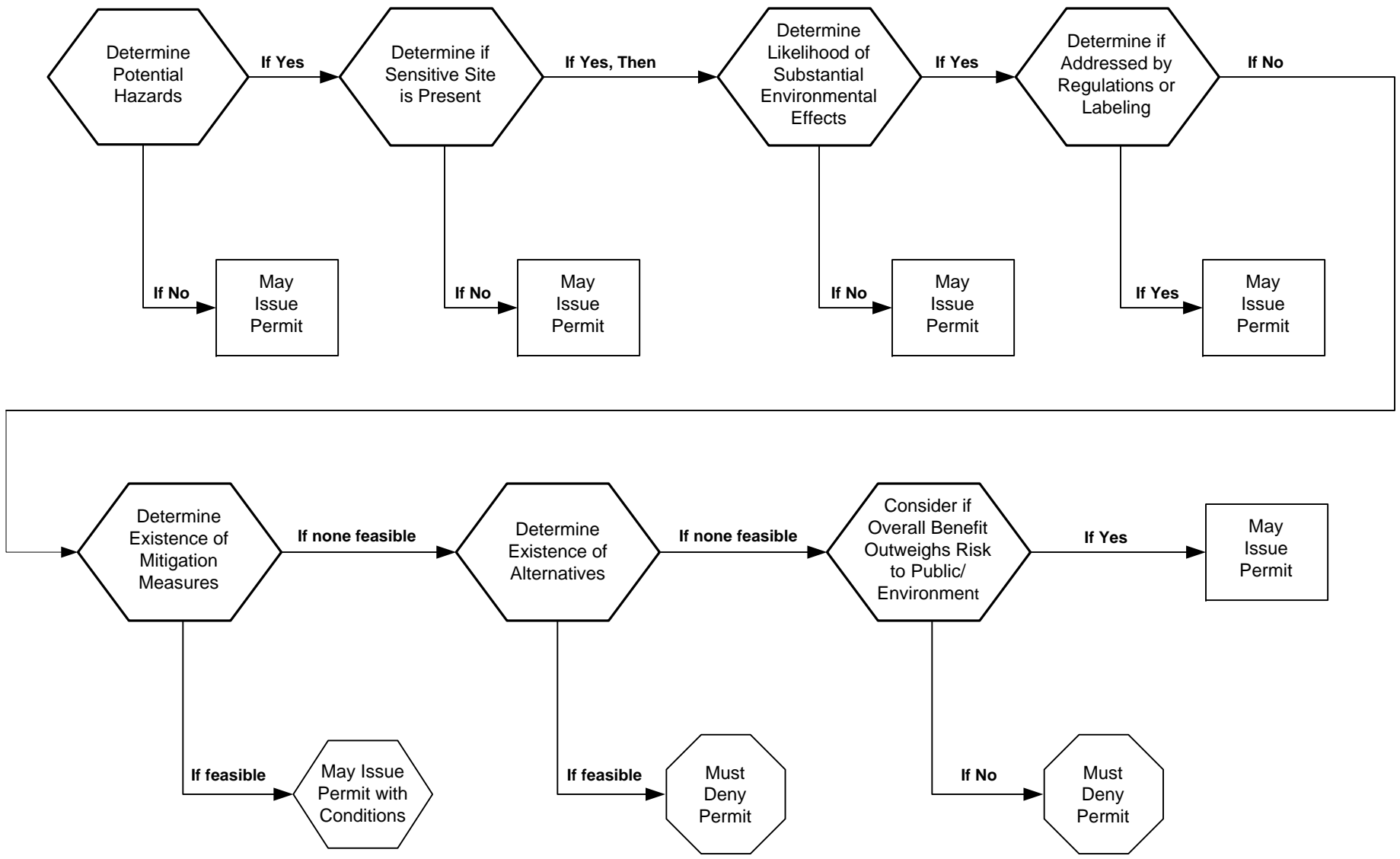
Requirement to refuse permit

Food and Agricultural Code section 12825 lists criteria that the Director *MAY* use to deny or cancel registration. However, FAC section 14006.5 (by its reference to FAC section 12825) **PROHIBITS** issuing a permit if FAC sections 12825(a - c) apply. “Reasonable, practical, and effective” is considered equivalent to “feasible” and “serious uncontrollable” is something worse than “substantial.”

The law makes a distinction between “serious uncontrollable” and “substantial” effects but does not provide any definitions for guidance. The permit consideration process may proceed despite the pesticide having a substantial adverse environmental effect provided it is not a serious uncontrollable adverse effect. This is a judgment call the CAC must make on a case-by-case basis. To avoid the prohibition, mitigation must be available to reduce (control) the “serious” adverse effect to (only) “substantial” or less. If mitigation capable of accomplishing this is not available, it is a serious uncontrollable effect.

A Notice of Proposed Action (NOPA) may be required for this action; see Chapters 9 and 10 for specific direction.

Overview of the Pesticide Permit Consideration Process Under Functional Equivalency Certification



Section 7.2

Evaluating the Permit

Introduction

This section describes the process of evaluating the permit application prior to its issuance or denial by the CAC.

Key points for the evaluation process

The “permit evaluation” process is initiated with the receipt of the restricted materials permit application.

- The permit evaluation process is not completed simply because the application paperwork has been accepted by the CAC.

The permit evaluation process continues with the CAC’s review of **each** NOI and possible pre-application site evaluation.

- The permittee keeps the permit evaluation process in play by timely filing an NOI with the CAC so the CAC may evaluate the proposed application.

The CAC’s NOI review and acceptance or denial signals the completion of the evaluation process for that use of the restricted material at the proposed site and time.

- The evaluation process is not complete until the CAC has reviewed the NOI for each proposed application.

If any of the following information is not on the preliminary restricted materials permit (application), it must be included on the NOI:

- Date(s) or crop stage(s) of intended restricted material application(s);
- Method of application (including dilution, volume per acre or other units, and dosage); and
- Name of the pest control business (if any), name, business address, and license or certificate number with expiration date of the certified private or commercial applicator responsible for supervising the possession or use of the restricted material(s).

(Reference: *3CCR section 6434*)

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Evaluating the Permit, Continued

Agricultural permits

Permits issued for the agricultural use of pesticides are required to be site and time specific (see 3 CCR section 6000 for definitions of site specific and time specific), therefore, it is usually necessary that the NOI be submitted to the CAC at least 24 hours prior to commencing the use of the pesticide.

Non-agricultural permits

Non-agricultural permits are not required to be site or time specific. Unless specifically required by the CAC, they **do not** require NOIs.

NOI items to consider

NOI items for the CAC to consider include:

- Several methods can be utilized for filing NOIs, including: posting at specific sites, telephone, fax, mail, e-mail, or by electronic transmission. Different situations may require different methods of submittal.
 - In cases where treatment will be on a continuous basis such as rights-of-way or spot treatments, the CAC may allow a pesticide use schedule to be submitted in lieu of separate NOIs for each application. The use schedule must be in writing, attached to the permit, and updated when any changes occur in the schedule or in relevant characteristics of the site. Any schedule submitted must provide sufficient detail about the site(s) and date(s) of applications to enable CAC staff to plan pre-application site evaluations and/or use monitoring inspections.
 - In the case of specific commodities which may require repeated treatments at scheduled intervals, the CAC may allow one NOI at the commencement of treatments as long as the pesticide remains the same, the schedule is specified on the NOI, and there is no change in the schedule dates. This does not limit the CAC's authority to require a separate NOI for each treatment.
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Evaluating the Permit, Continued

Additional permit requirements

In addition to the information required by 3 CCR sections 6428 and 6430, the permit shall contain any appropriate conditions and limitations on the pesticide(s), such as:

- Requirements for notifying surrounding neighbors that the application will be made; or
- Pest management requirements or practices to minimize pesticide use.

The CAC is responsible for knowing local conditions and using his/her knowledge to make their determinations. Each CAC should also consider, and where appropriate, utilize:

- Food and Agricultural Code section 14006.5;
- Other applicable FAC sections;
- Title 3, CCR;
- Pest management guides;
- Information from monitoring other pest control operations; and
- DPR recommended permit conditions.

Information from sources such as available pest management guides or DPR recommended permit conditions for the pesticide, commodity, or site in question are considered informational only, not requirements. However, the CAC may make them requirements by identifying specific portions as permit conditions.

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Evaluating the Permit, Continued

DPR recommended permit conditions

DPR's scientific staff routinely perform evaluations of potential health and environmental impacts. DPR relies upon its scientists to review and use data, and their evaluations and analyses to develop "recommended permit conditions." As CACs typically do not employ pesticide or environmental scientists, researchers, or industrial hygienists, it is presumed they will base their permit conditions on DPR recommendations.

These recommended permit conditions reflect minimum measures necessary to protect people and the environment. CACs use this information, along with their evaluation of local conditions, to set site specific limits on pesticide applications. In order to maintain CEQA equivalency, CACs must have the authority and flexibility to restrict use permits to reflect local conditions at the time of the application. Therefore, the CACs may follow the DPR recommended permit conditions, or, may structure their own equivalent use restrictions. (See Appendices for chemical-specific recommended permit conditions.)

Should the CAC choose not to follow DPR's recommended permit conditions, they must be able to articulate their reasons and explain how they addressed the hazards of the authorized pesticides. DPR will support the CAC's decisions and actions provided they result in adequate protection of human health and the environment.

Pesticide use reporting

The CAC should inform the permit applicant about pesticide use reporting requirements. The permittee should understand how to properly complete the pesticide use report. Failure to submit the report to the CAC may result in the cancellation of the permit, refusal of future permits, or civil penalties.

For additional information, see Volume 1, *General Information*.

DPR's web site also has information on pesticide use reporting at:
<http://www.cdpr.ca.gov/docs/pur/purmain.htm>

Section 7.3

Reviewing and Evaluating the Notice of Intent

Introduction This section describes the process of reviewing and evaluating the NOI prior to the pesticide application.

Purpose The purpose of the NOI is to provide specific and critical information that was not available at the time the preliminary permit was issued.

Who is responsible for submitting the NOI? The property operator (permittee) is responsible for assuring the NOI is submitted to the CAC's office. Others may submit the NOI on the property operator's behalf, but responsibility cannot be transferred (see *3 CCR section 6434*).

If the CAC finds an application taking place and the NOI has **not** been submitted, he/she may stop the application since it is not in accordance with the conditions of the permit.

The NOI is part of the permit.

Reviewing the NOI The CAC is required to review all NOIs submitted to determine whether the:

- Location(s) of the proposed application matches the permit locations;
- Permit requirements from 3 CCR section 6428(g - i) are included, if necessary;
- Environmental conditions have changed since the permit was issued (this is the "local knowledge" of the CAC, or, it is specified by the permittee on the NOI); and
- Proposed application should be included in the CAC's pre-application site evaluation or application inspection monitoring activities considering the:
 - Permittee's history of noncompliance.
 - County's work plan.

Compare the NOI against the permit.

The NOI review "completes" the evaluation process, unless selected for a pre-application site evaluation.
(Reference: *3 CCR section 6434*)

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Reviewing and Evaluating the Notice of Intent, Continued

Evaluating the NOI

The CAC must review **all** NOIs submitted **prior** to the scheduled application.

- Compare the NOI against the permit. If the information has been provided on the permit, it may be referenced on the NOI. The NOI must provide the information listed in 3 CCR section 6434 concerning the proposed application. The person filing the NOI should be aware of what was initially considered on the map so that any changes can be indicated when the NOI is filed.
 - Maps must be reviewed for accuracy each time the permit is issued or when changes in the surrounding area indicate an update in the map is necessary.
 - Date and initial the map to show the most current edition whenever the permit is renewed or whenever the map is revised.
 - If the permit applicant knows and indicates the treatment date(s) at the time of permit issuance (as well as other required information), there are no further NOI requirements.
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