Functional Equivalency under the California Environmental Quality Act

The California Environmental Quality Act (CEQA), passed in 1970, requires state and local agencies to follow a protocol of analysis and public disclosure of environmental impacts of proposed projects. CEQA applies to most projects conducted by a public agency, supported by public funds or which must be permitted, licensed or approved in some way by a public agency.

In 1976, the State Attorney General issued an opinion on the roadside use of herbicides in Mendocino County. The Attorney General determined that when the county issued permits for the use of pesticides, it was a government activity subject to the provisions of CEQA. This meant that CACs throughout the state would have to prepare an environmental impact report (EIR) or a determination of no significant adverse impacts (negative declaration) before approving any of the more than 60,000 restricted material permits issued each year. Similarly, the department would be required to prepare an EIR or negative declaration before issuing any of roughly 11,000 pesticide product registrations each year.

The Legislature immediately placed a moratorium on applying CEQA to the pesticide regulatory program. In 1977, an Environmental Assessment Team was formed to prepare a "master" (programmatic) EIR covering the use of all registered pesticides throughout the state. After more than a year's work, the team concluded that the regulatory program lacked mechanisms to meet CEQA procedural requirements and that existing processes could not be easily adapted to serve. Also, the team concluded, "the magnitude of the state program prevents any reasonable attempt to consider in a single report all of the information CEQA requires for each pesticide regulatory decision."

The determination that the program was inadequate to meet the needs of CEQA led to the passage of AB 3765 (Chapter 308, Statutes of 1978). It required the department to establish rules and regulations that could be certified by the Secretary of the Resources Agency as the functional equivalent of an EIR or negative declaration. This certification means the agency managing the program does not have to prepare an EIR or negative declaration on each activity it approves. However, certified programs must provide other substitute documents. Although less expansive, these documents must assure an environmental review. The program must provide for consultation with other agencies, and public notice and comment.

To gain approval for certified status, the department expanded its review of data before registration, changed regulations relating to pesticide registration and evaluation, and set up procedures to ensure public notice of its proposed registration actions and decisions.

Regulations were also added to require CACs, before issuing restricted material permits, to evaluate the proposed application site and to consider feasible alternatives and mitigation measures if significant risk exists. The department also established the Pesticide Registration and Evaluation Committee to create a mechanism for interaction between the department and other state agencies that have responsibility for resources affected by pesticides.

In December 1979, the pesticide regulatory program was certified by the Resources Agency as functionally equivalent to the EIR requirements of CEQA. Any substantial changes in the certified regulatory program must be submitted to the Secretary of the Resources Agency for review. The Secretary has the authority to decide if the change alters the program so that it no longer meets the qualification for certification.

"Preparation of environmental impact reports … for pesticide permits would be an unreasonable and expensive burden on California agriculture and health protection agencies."

— 1978 legislation (AB 3765)