

California Environmental Quality Act Compliance

The ISOR claims that the proposed amendments are exempt from the California Environmental Quality Act (“CEQA”), citing multiple categorical exemptions, and also referencing that CARB has an approved certified regulatory program. CARB has, however, in the process ignored that the California Legislature has imposed additional CEQA obligations that apply to the proposed amendments to the Landfill Methane Rule.

Public Resources Code section 21159 states:

An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, including a rule or regulation that requires the installation of pollution control equipment or a performance standard or treatment requirement pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include all of the following:

- (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- (2) An analysis of reasonably foreseeable feasible mitigation measures.
- (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.
- (4) For a rule or regulation that requires the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), the analysis shall also include reasonably foreseeable greenhouse gas emission impacts of compliance with the rule or regulation.

The proposed amendments require the installation of air pollution control equipment, impose an increased performance or treatment standard relating to landfill gas. Moreover, Public Resource Code section 21159 specifically calls out that regulations adopted pursuant to the Global Warming Solutions Act are included as regulatory proposals that are to be analyzed under that section.

While CEQA generally authorizes lead agencies to use categorical exemptions when appropriate, and authorizes agencies to rely upon certified regulatory programs when the rulemaking documents sufficiently cover the environmental impacts of a proposed regulation, the California Legislature has imposed specific requirements on CARB as one of the agencies listed in Public Resources Code section 21159.4 to analyze: (1) the reasonably foreseeable environmental impacts of the methods of compliance; (2) the reasonably foreseeable mitigation measures; and, (3) the reasonably foreseeable alternative means of compliance. None of that analysis appears in the rulemaking record for this regulation.

In addition, to avail itself of its certified regulatory program, the written documentation of the certified regulatory program must include mitigation measures to minimize any significant adverse effect on the environment of the activity. The rulemaking record in this proceeding is devoid of any such analysis. Accordingly, CARB cannot rest on its certified regulatory program because the current rulemaking record does not satisfy the requirements of Public Resources Code section 21080.5 as a alternative environmental analysis.