

Addendum to CEQA Initial Study / Mitigated Negative Declaration

Potrero Hills Energy Producers Landfill Gas to Energy Project (BAAQMD Permit Application #23333)

The Initial Study, drafted between May 2011 and March 2012, referenced the thresholds of significance for air quality impacts that were adopted by the Air District's Board in June 2010. These thresholds were called into question by an order issued March 5, 2012 in *California Building Industry Association v. BAAQMD*, Alameda Superior Court Case No. RGI0548693.¹ The order requires the Air District thresholds to be subject to further environmental review. The Alameda County Superior Court determined that the Air District's adoption of the thresholds constituted a "project" subject to CEQA. Therefore, the Alameda Superior Court determined, the Air District was required to conduct a CEQA review of any potential environmental impacts of the District's adoption of the thresholds. The Court ordered that, prior to the Air District relying on the thresholds as generally applicable recommendations, the Air District must conduct a review of any environmental impacts of its action in adopting the thresholds. On May 2, 2012, the Air District appealed the Alameda County Superior Court's March 5, 2012 order. Pending the outcome of the appeal, the Air District may not rely on the 2010 thresholds as generally applicable.

In light of the Alameda County Superior Court's order, the Air District re-analyzed what thresholds would be most appropriate to evaluate the air quality impacts of the Potrero Hills Energy Producers Landfill Gas to Energy Project (the "Project"). After examining the substantial evidence supporting the thresholds that were used in the Initial Study, and the evidence underlying other potential thresholds for review of the significance of air quality impacts, the Air District has determined that the thresholds used in the Initial Study remain the most appropriate and applicable thresholds of significance for this Project. The substantial evidence underlying these thresholds is outlined in detail in a document drafted by the Air District, entitled *Proposed Thresholds of Significance*, May 3, 2010, which is currently available on the Air District's website at http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Proposed_Thresholds_Report_%20May_3_2010_Final.ashx?la=en and by this reference the document is fully incorporated into the record for this Project. After reconsidering the evidence underlying the thresholds, the Air District remains confident in the scientific soundness of the evidence supporting the thresholds and believes they were and are the appropriate thresholds to apply in this case. The thresholds used appropriately state the level of pollutants that should be deemed significant in this case. That being the case, the Air District intends to apply the same thresholds for air quality impacts as were used in the Initial Study, and thus the analysis of the air quality impacts in the Initial Study remains sound and need not be revised.

¹ Other claims were stated in the case, but these claims are not addressed in the Alameda Superior Court's order. Several of these claims were successfully challenged by demurrers filed by the Air District. The remaining claims have not yet been adjudicated, and they are all fully contested by the Air District. The remaining claims have no import to this case.