

ATTACHMENT 1

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Attachment 1 to the Governing Board Resolution for: Final Subsequent Environmental Assessment for Proposed Amended Rule 1110.2 – Emissions from Gaseous- and Liquid-Fueled Engines

Findings and Statement of Overriding Considerations

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INTRODUCTION

Proposed Amended Rule 1110.2 – Emissions from Gaseous- and Liquid-Fueled Engines, is considered a “project” as defined by the California Environmental Quality Act (CEQA) (California Public Resources Code §§21000 et seq.). The South Coast Air Quality Management District (SCAQMD) as Lead Agency for the proposed project, prepared a Draft Subsequent Environmental Assessment (SEA) which analyzed potential adverse environmental impacts of the proposed project.

The Draft SEA was prepared as a public disclosure document intended to: (a) provide the lead agency, responsible agencies, decision makers and the general public with information on the environmental impacts of the proposed project; and, (b) be used as a tool by decision makers to facilitate decision making on the proposed project. The Draft SEA was released for a 45-day public review and comment period from March 29, 2016 to May 13, 2016. The Draft SEA, was prepared pursuant to CEQA Guidelines §15161, and concluded that only the topic of operational air quality and greenhouse gas emissions impacts would have significant adverse impacts. During that public comment period, the SCAQMD received no comment letters.

CERTIFICATION OF THE FINAL SEA

The SCAQMD Governing Board certifies that it has been presented with the Final SEA for Proposed Amended Rule (PAR) 1110.2 and that it has reviewed and considered the information contained in the Final SEA prior to making the following certifications and findings. Pursuant to CEQA Guidelines §15090 (Title 14 of the California Code of Regulations, §15090), the SCAQMD Governing Board certifies that the Final SEA has been completed in compliance with the CEQA statutes and the CEQA Guidelines. The SCAQMD Governing Board certifies the Final SEA for the actions described in these findings and in the Final SEA, i.e., the proposed project. The SCAQMD Governing Board further certifies that the Final SEA reflects its independent judgment and analysis. The Governing Board Resolution includes the certification of the Final SEA.

SUMMARY OF THE PROPOSED PROJECT

Rule 1110.2 – Emissions from Gaseous- and Liquid-Fueled Engines limits emissions of nitrogen oxides (NO_x), volatile organic compounds (VOCs) and carbon monoxide (CO) from the combustion of gaseous and liquid fueled engines. This rule applies to engines that are operating in the SCAQMD and that are rated more than 50 rated brake horsepower (bhp). The rule was adopted in 1990 and amended in 2012 to establish an effective date of January 1, 2016 for owners and operators of biogas engines to meet the emission limits that all other engines under this rule were required to meet by July 1, 2011.

SCAQMD staff’s recent evaluation of the state of compliance with Rule 1110.2, as well as feedback from the affected industry, revealed that some equipment owners/operators are experiencing compliance challenges, in particular, with certain effective dates in the rule. Based on this information, in December 2015, the SCAQMD Governing Board amended Rule 1110.2 to delay implementation of NO_x, VOC, and CO emission limit compliance dates until 2017 for biogas engines because some control technologies have not matured in a timely manner. The delayed emission reductions were greater than the SCAQMD’s CEQA significance thresholds,

thus the air quality impacts were considered significant. However, all delayed emission reductions from that rule amendment will be recaptured over time, so the impacts are not permanent. Limits were also adopted on the number of breakdowns and excess emissions during breakdown events in order to be consistent with the EPA's breakdown provisions and to allow the rule to be included in the State Implementation Plan (SIP). A Final SEA was certified on December 4, 2015 that analyzed all potential environmental impacts resulting from the proposed 2015 amendments to Rule 1110.2.

The proposed project consists of an additional amendment to Rule 1110.2, which would provide the facility operator of MM PRIMA DESHECHA ENERGY, LLC, or any of its successors, which is located at 32250 La Pata Ave, San Juan Capistrano, CA 92675, relief from the emissions requirements specified in Table III-B of Rule 1110.2, provided the facility has submitted a detailed retirement plan, approved by the Executive Officer, for the permanent shutdown of all equipment subject to Rule 1110.2 by October 1, 2022. This Final SEA is being prepared because a small portion of the emission reductions foregone (emissions from this one facility) that were previously analyzed in the December 2015 SEA would be extended from 2017 until 2022; therefore, the increased severity of the impact was not previously disclosed.

Project Objectives

CEQA Guidelines §15124(b) requires the project description to include a statement of objectives sought by the proposed project, including the underlying purpose of the proposed project. Compatibility with project objectives is one criterion for selecting a range of reasonable project alternatives and provides a standard against which to measure project alternatives. The project objectives identified in the following bullet points have been developed: 1) in compliance with CEQA Guidelines §15124 (b); and, 2) to be consistent with policy objectives of the SCAQMD's New Source Review program. The project objectives are as follows:

- Provide relief for the facility operator of MM PRIMA DESHECHA ENERGY, LLC, or any of its successors, from the emissions requirements specified in Table III-B of Rule 1110.2, provided the facility has met specific criteria;
- Maintain the lower limits on NO_x, VOC, and CO emissions from the combustion of gaseous and liquid biogas engines; and
- Aside from temporary air quality impacts ending October 1, 2022, avoid generating any new significant adverse environmental impacts.

SIGNIFICANT ADVERSE IMPACTS WHICH CAN BE REDUCED BELOW A SIGNIFICANT LEVEL OR WERE CONCLUDED TO BE INSIGNIFICANT

The Final SEA identified air quality and greenhouse gas emissions as an area that may be adversely affected by the proposed project. The proposed project was evaluated according to SCAQMD's CEQA environmental checklist of approximately 17 environmental topics. The screening analysis concluded that the following environmental areas would not be significantly adversely affected by the proposed project:

- aesthetics
- agriculture and forestry resources
- biological resources

- cultural resources
- energy
- geology and soils
- hazards and hazardous materials
- hydrology and water quality
- land use and planning
- mineral resources
- noise
- population and housing
- public services
- recreation
- solid/hazardous waste
- transportation/traffic

POTENTIAL SIGNIFICANT ADVERSE IMPACTS THAT CANNOT BE REDUCED BELOW A SIGNIFICANT LEVEL

The Final SEA identified the topic of operational air quality and greenhouse gas emissions as the only area that may be significantly adversely affected by the proposed project and could not identify any feasible mitigation measures to adequately reduce potential impacts to less than significant.

Operational Air Quality

PAR 1110.2 impacts only one biogas facility located in the SCAQMD jurisdiction. The proposed project will result in additional emissions foregone from 2017 to 2022, which will increase the severity of an impact previously analyzed in the December 2015 Final SEA. There are no construction-related activities associated with the proposed project, and therefore, no construction-related impacts are expected to occur. Additionally, since GHG emissions are based on fuel usage, the GHG emissions will remain the same no matter the type of combustion source.

NO_x, VOC, and CO emission reductions for PAR 1110.2 would result in approximately 0.07 tons/day of NO_x, 0.01 tons/day of VOC, and 0.08 tons/day of CO emissions foregone from 2017 to 2022. The quantity of foregone NO_x emission reductions in 2017 to 2022 exceeds the SCAQMD CEQA significance thresholds. Thus, PAR 1110.2 will result in adverse significant operational air quality impacts.

Potential mitigation measures were evaluated. Fortistar, the owner/operator of MM PRIMA DESHECHA ENERGY, LLC, offered potential mitigation options that involved the shutdown of currently operating biogas engines at their Rialto and Coyote Canyon facilities. However, these mitigation options would result in other adverse environmental impacts and were rejected as mitigation for the proposed project by the SCAQMD staff. Additionally, there would be no co-benefit of electricity production from the biogas engines and there would be additional air quality impacts from offsite energy generation. Therefore, no feasible mitigation measures have been identified that would reduce or eliminate the expected foregone NO_x emission reductions. Additionally, three project alternatives were evaluated to investigate other options to reduce or avoid potentially significant adverse effects that the proposed project would have on the

environment, while achieving the project objectives. Compared to the project alternatives, the proposed project provides the best balance in achieving the project objectives while minimizing the adverse environmental impacts to air quality. Consequently, the operational air quality emission impacts from the proposed project cannot be mitigated to less than significant.

Even though the proposed project could result in emission reductions foregone during operation from 2017 to 2022 that exceeds the applicable operational air quality significance thresholds, they are not expected to interfere with the air quality progress and attainment demonstration projected in the AQMP or cause a cumulative impact. Based on regional modeling analyses performed for the 2012 AQMP, implementing control measures contained in the 2012 AQMP, in addition to the air quality benefits of the existing rules, it is anticipated that the South Coast Air Basin will be in attainment with all national and most state ambient air quality standards by the year 2023. Therefore, when cumulative operational air quality impacts from the proposed project, previous amendments, and all other AQMP control measures are considered together, cumulative impacts are not expected to be significant because implementation of all AQMP control measures are expected to result in net emission reductions and overall air quality improvement. This determination is consistent with the conclusion in the 2012 AQMP Final Program EIR that direct cumulative air quality impacts from implementing all AQMP control measures are not expected to be significant (SCAQMD, 2012). For these aforementioned reasons, the proposed project would not result in irreversible environmental changes or an irretrievable commitment of resources.

FINDINGS

Public Resources Code §21081 and CEQA Guidelines §15091(a) state that no public agency shall approve or carry out a project for which a CEQA document has been completed which identifies one or more significant adverse environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. Additionally, the findings must be supported by substantial evidence in the record (CEQA Guidelines §15091(b)). As identified in the Final SEA and summarized above, the proposed project has the potential to create significant adverse operational air quality impacts. The SCAQMD Governing Board, therefore, makes the following findings regarding the proposed project. The findings are supported by substantial evidence in the record as explained in each finding. The Findings will be included in the record of project approval and will also be noted in the Notice of Decision. The Findings made by the SCAQMD Governing Board are based on the following significant adverse impact identified in the Final SEA.

NO_x, VOC, and CO emission reductions for PAR 1110.2 would be delayed and would result in approximately 0.07 tons/day of NO_x, 0.01 tons/day of VOC, and 0.08 tons/day of CO emissions foregone from 2017 to 2022 as a result of the proposed project. The quantity of peak daily NO_x emission reductions foregone exceeds the SCAQMD's CEQA significance threshold for operation.

Finding and Explanation:

PAR 1110.2 will result in adverse significant operational NO_x air quality impacts as a result of a “worst case” scenario analysis. The CEQA air quality analysis is considered a “worst-case” analysis because significance determinations for operational emissions are based on the

maximum or peak daily allowable emissions during the operational phase. The significant adverse environmental impacts are identified in a CEQA document; and the CEQA document described all feasible measures that could minimize the impacts of the proposed project.

The proposed project would provide the facility operator of MM PRIMA DESHECHA ENERGY, LLC, or any of its successors, which is located at 32250 La Pata Ave, San Juan Capistrano, CA 92675, relief from the emissions requirements specified in Table III-B of Rule 1110.2, provided the facility has submitted a detailed retirement plan, approved by the Executive Officer, for the permanent shutdown of all equipment subject to Rule 1110.2 by October 1, 2022. The affected equipment consists of biogas engines at the facility. Due to the fact that this facility has entered into a Power Purchase Agreement (PPA) through 2022, and the affected equipment is scheduled to be removed permanently by 2022, the proposed project would provide relief for the specific affected equipment from Rule 1110.2.

The proposed project will forego emissions for a longer period (2017 through 2022) than was previously analyzed in the December 2015 Final SEA. NO_x, VOC, and CO emission reductions for PAR 1110.2 would be foregone and would result in approximately 0.07 tons/day of NO_x, 0.01 tons/day of VOC, and 0.08 tons/day of CO from 2017 to 2022. The peak daily NO_x emission reductions foregone for the proposed project exceeds the SCAQMD's CEQA significance threshold for operation of 55 lbs/day.

When the affected facility permanently shuts down all equipment subject to Rule 1110.2 in 2022, the landfill gas currently utilized in the biogas engines will be diverted to the landfill flares for combustion. If the biogas engines were retrofitted or replaced to be compliant with Rule 1110.2, the increase in emissions from combustion in the landfill flares (107 lbs/day) compared to combustion in Rule 1110.2 compliant biogas engines (76 lbs/day) would be 31 lbs/day, which is below the SCAQMD's CEQA significance threshold of 55 lbs/day for NO_x. Therefore, the foregone NO_x emission reductions would be significant from 2018 through 2022. After 2022, some of the NO_x emission reductions would be recaptured through facility closure and the NO_x emission reductions foregone (31 lbs/day) would be less than the SCAQMD's CEQA significance threshold.

Potential mitigation measures were evaluated. Fortistar, the owner/operator of MM PRIMA DESHECHA ENERGY, LLC, offered potential mitigation options that involved the shutdown of currently operating biogas engines at their Rialto and Coyote Canyon facilities. However, these mitigation options would result in other adverse environmental impacts and were rejected as mitigation for the proposed project by the SCAQMD staff. Additionally, there would be no co-benefit of electricity production from the biogas engines and there would be additional air quality impacts from offsite energy generation. Therefore, no feasible mitigation measures have been identified that would reduce or eliminate the expected foregone NO_x emission reductions. Additionally, three project alternatives were evaluated to investigate other options to reduce or avoid potentially significant adverse effects that the proposed project would have on the environment, while achieving the project objectives. Compared to the project alternatives, the proposed project provides the best balance in achieving the project objectives while minimizing the adverse environmental impacts to air quality. Consequently, the operational air quality emission impacts from the proposed project cannot be mitigated to less than significant.

No feasible mitigation measures have been identified that would reduce or eliminate the expected delay in emission reductions from the one affected facility. Consequently, the

operational air quality emissions impacts from the proposed project cannot be mitigated to less than significant.

The Governing Board finds that no feasible mitigation measures have been identified that would mitigate the potentially significant adverse impacts to operational air quality to less than significant levels. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors" (Public Resources Code §21061.1).

The Governing Board finds further that the Final SEA considered alternatives, pursuant to CEQA Guidelines §15126.6. The proposed project was considered to provide the best balance between meeting the objectives of the project while minimizing potentially significant adverse environmental impacts. The administrative record for the CEQA document and adoption of the rule is maintained by the SCAQMD Office of Planning, Rule Development and Area Sources.

Conclusion

The Governing Board finds that the findings required by CEQA Guidelines §15091(a) are supported by substantial evidence in the record. The record of approval for this project may be found in the SCAQMD's Clerk of the Board's Office located at SCAQMD headquarters in Diamond Bar, California.

STATEMENT OF OVERRIDING CONSIDERATIONS

If significant adverse impacts of a proposed project remain after incorporating mitigation measures, or no measures or alternatives to mitigate the adverse impacts are identified, the lead agency must make a determination that the benefits of the project outweigh the unavoidable adverse environmental effects if it is to approve the project. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project [CEQA Guidelines §15093(a)]. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" [CEQA Guidelines §15093 (a)]. Accordingly, a Statement of Overriding Considerations regarding potentially significant adverse operational NO_x air quality impacts resulting from the "worst case" analysis of the proposed project has been prepared. This Statement of Overriding Considerations is included as part of the record of the project approval for the proposed project. Pursuant to CEQA Guidelines §15093(c), the Statement of Overriding Considerations will also be noted in the Notice of Decision for the proposed project.

Despite the inability to incorporate changes into the proposed project that will mitigate potentially significant adverse operational air quality impacts to a level of insignificance, the SCAQMD's Governing Board finds that the following benefits and considerations outweigh the potentially significant unavoidable adverse environmental impacts:

1. The analysis of potential adverse environmental impacts incorporates a "worst case" approach. This entails the premise that whenever the analysis requires that assumptions be made, those assumptions that result in the greatest adverse impacts are typically

chosen. This method likely overestimates the actual emission reductions foregone from the proposed project.

2. The proposed project would provide relief for the facility operator of MM PRIMA DESHECHA ENERGY, LLC, or any of its successors, from the emissions requirements specified in Table III-B of Rule 1110.2, provided the facility has submitted a detailed retirement plan, approved by the Executive Officer, for the permanent shutdown of all equipment subject to Rule 1110.2 by October 1, 2022. The facility has established that it cannot economically comply with the existing rule and would have to shut down, thus resulting in an early loss of beneficial use of the landfill gas, and would further result in the loss of revenues to the County of Orange.
3. Aside from temporary air quality impacts ending October 1, 2022, the proposed project would avoid generating any new significant adverse environmental impacts.

The SCAQMD's Governing Board finds that the aforementioned considerations outweigh the unavoidable significant effects to the environment as a result of the proposed project.

MITIGATION

CEQA requires an agency to prepare a plan for reporting and monitoring compliance with the implementation of measures to mitigate significant adverse environmental impacts. Mitigation monitoring requirements are included in CEQA Guidelines §15097 and Public Resources Code §21081.6, which specifically state:

When making findings as required by subdivision (a) of Public Resources Code §21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Public Resources Code §21080, the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment (Public Resources Code §21081.6). The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

The provisions of CEQA Guidelines §15097 and Public Resources Code §21081.6 are triggered when the lead agency certifies a CEQA document in which mitigation measures, changes, or alterations have been required or incorporated into the project to avoid or lessen the significance of adverse impacts identified in the CEQA document. However, since no feasible mitigation measures to fully reduce significant adverse operational NO_x air quality impacts were identified, a mitigation monitoring and reporting plan for operations is not required.

CONCLUSION

Based on a “worst case” analysis, the potential adverse operational air quality impacts from the adoption and implementation of the proposed project are considered significant and unavoidable.

NO_x, VOC, and CO emission reductions for PAR 1110.2 would be delayed and would result in approximately 0.07 tons/day of NO_x, 0.01 tons/day of VOC, and 0.08 tons/day of CO emissions

foregone from 2017 to 2022 as a result of the proposed project. The quantity of peak daily NOx emission reductions foregone exceeds the SCAQMD's CEQA significance threshold for operation. No feasible mitigation measures or project alternatives have been identified that would reduce these impacts to insignificance.