

ATTACHMENT D
Interim GHG Significance Threshold Proposal – Key Issues/Comments

The following key issues were raised during the development of the staff proposal. Staff responses to each issue have been prepared for the key issues received by the AQMD either in writing or during the public consultation meetings held since October 22, 2008.

Comment #1

The AQMD's screening levels are not based on substantial scientific evidence and, therefore, could be litigated. Staff needs to describe how the screening levels were established.

Response #1

AQMD staff is recommending a bifurcated screening level approach to address two greatly differing project types: industrial projects as opposed to residential and commercial projects (which are largely indirect sources). The former category typically contains stationary source equipment whose emissions are largely permitted or regulated by the AQMD; whereas the latter category is mostly residential, commercial (may also include industrial) building structures that attract or generate mobile source emissions. In light of the GHG reductions needed to stabilize the climate while considering implementation resource requirements, the policy objective used to establish the screening thresholds is to capture projects that represent approximately 90 percent of GHG emissions from new sources. A 90 percent emission capture rate means that 90 percent of total emissions from all new or modified stationary source projects would be subject to a CEQA analysis, including a negative declaration, a mitigated negative declaration, or an environmental impact report.

The 90 percent capture rate approach is one approach discussed in CAPCOA's White Paper. The 90 percent capture rate approach assumes that the vast majority of GHG emissions from new or modified sources will be subject to feasible mitigation measures and an alternatives analysis, thus, reducing emissions increases as much as feasible. Additionally, even smaller residential/commercial projects will be required to mitigate, if they involve buildings subject to Title 24, by exceeding the Title 24 by X percent to avoid being deemed significant.

The 90 percent capture rate approach is expected to prevent new industrial development from substantially hindering progress towards achieving the goals of the Governor's Executive Order S-3-05, while avoiding overwhelming the AQMD's capability to process environmental documents. Staff believes a zero threshold is not feasible to implement. AQMD currently issues 600 to 700 new permits annually for combustion sources, which emit GHGs. A zero threshold would result in requiring several hundred additional EIRs every year, with minimal environmental benefit and substantial costs of permits for small businesses.

The 90 percent emissions capture rate GHG significance screening level in Tier 3 was derived using the following methodology. Using AQMD's Annual Emission Reporting (AER) Program staff compiled reported annual natural gas consumption for 1,297 permitted facilities for 2006 through 2007 and rank-ordered the facilities to estimate the 90th percentile of the cumulative natural gas usage for all permitted facilities. Approximately 10 percent of facilities evaluated comprise more than 90 percent of the total natural gas consumption, which corresponds to 10,000 metric tons of CO₂ equivalent emissions per year (MTCO₂eq/yr) (the majority of combustions emissions is comprised of CO₂). This value represents a boiler with a rating of

approximately 27 million British thermal units per hour (mmBtu/hour) of heat input, operating at an 80 percent capacity factor.

To achieve the same policy objective of capturing 90 percent of GHG emissions from new development projects in the residential/commercial sectors, staff discussed with the working group a proposal combining performance standards and screening thresholds. The performance standards primarily focus on energy efficiency measures beyond Title 24 and a screening level of 3,000 MTCO₂eq/yr based on the relative GHG emissions contribution between residential/commercial sectors and stationary source (industrial) sectors. Additional analysis is needed to further define the performance standards and to coordinate with CARB staff's interim GHG proposal. Therefore, no thresholds for residential/commercial sectors are recommended by staff at this time and the stationary source (industrial) sector threshold, if adopted by the Governing Board, will be used by the AQMD for projects where it is the lead agency.

Comment #2

Statewide threshold levels are necessary for consistency; therefore, AQMD should wait until CARB, OPR, or CEC establish threshold

Response #2

CARB is currently in the process of developing an interim GHG significance threshold that would apply statewide. Although CARB staff has stated they expect to adopt GHG significance thresholds early in 2009, AQMD staff believes it is prudent to move forward with the staff's proposed interim GHG for its projects where it carries out the role of lead agency under CEQA. There is an ongoing need by AQMD staff to make GHG significance determinations for permit application projects where the AQMD is the lead agency, as well as its rule making CEQA documents. In light of CARB's GHG significance threshold process, staff is recommending deferring the interim GHG significance threshold for residential/commercial projects. Staff will report back to the Governing Board in March 2009 on CARB's GHG significance threshold process and its recommendation, if any.

Comment #3

Before adopting an interim GHG significance threshold, a process needs to be developed that transitions from interim level to statewide threshold.

Response #3

AQMD staff will begin implementing the interim GHG significance threshold proposal for stationary source (industrial) projects immediately upon adoption by the Governing Board. If CARB adopts its interim GHG proposal early in 2009, AQMD staff will report this to the Governing Board in March 2009 regarding any recommended changes or additions to the AQMD's interim threshold.

Comment #4

GHG emissions from vehicle traffic, energy consumption, and water usage should also be used, in addition to stationary source GHG emissions to establish a GHG significance level.

Response #4

Staff's interim GHG significance threshold proposal for stationary sources was developed using AQMD's AER Program (see response #1) because this is the only comprehensive data base

available to SCAQMD staff. Staff then compiled reported annual natural gas consumption for 1,297 permitted facilities for 2006 through 2007 and rank-ordered the facilities to estimate the 90th percentile of the cumulative natural gas usage for all permitted facilities. Most GHG emissions from industrial facilities are generated from stationary sources, while a relatively small percent is generated by traffic, water usage, etc. Therefore, although staff's GHG significance threshold proposal was derived without considering offsite indirect GHG emissions, staff believes the interim GHG significance threshold for stationary source projects is appropriate because it is consistent with staff's overarching goal of capture 90 percent or more of the GHG emissions from industrial projects.

Relative to the interim GHG significance threshold for residential/commercial projects, staff is recommending deferring consideration of this item until at least March 2009 so AQMD staff can further evaluate the proposal and participate in the statewide process..

Comment #5

Sector-based standards should also be evaluated as an option.

Response #5

Sector-based standards are currently included in Tier 4, compliance option #3. Staff is currently recommending deferring consideration of this item until March 2009 AQMD such that staff can further evaluate and identify sector-based GHG significance thresholds in coordination with CARB's process.

Comment #6

It is necessary to first establish the GHG baseline before establishing GHG thresholds against which the significance of a project's impacts will be measured.

Response #6

CEQA Guidelines §15125 already provides guidance for establish a project's baseline. Current CEQA guidance relative to the baseline should be used when establishing a project's GHG emissions baseline.

Comment #7

Staff has not provide scientific evidence to show that the Tier 4, compliance option 3 (reducing GHG emissions 30 percent from business-as-usual (BAU) levels) would achieve the environmental objective of stabilizing global climate. Further, project proponents may artificially inflate BAU emissions to make it easier to achieve the 30 percent reduction in GHG emissions.

Response #7

The target objective of reducing a project's GHG emissions by 30 percent from BAU levels is consistent with the current GHG emission reduction target objective in AB 32. AB 32 requires reducing GHG emissions to 1990 levels by 2020, which is an approximately 30 percent reduction from projected BAU levels.

Staff is recommending, however, that further evaluation be conducted to address comments raised and to consider other approaches as appropriate. Specifically, CARB staff proposed a hybrid approach in their Draft Proposal that combines the AQMD's Tier

3 and Tier 4 concepts for stationary source projects. Staff will participate in CARB's development process and if CARB's board does not take final action on their interim GHG significance threshold proposal by February 2009, AQMD staff will report back in the following month regarding the viability of the Tier 4 performance standards and recommended actions, if any.

Comment #8

An evolving definition of BAU could lead to unfairness and may discourage long term compliance planning.

Response #8

In CAPCOA's White Paper, CAPCOA acknowledges that BAU could change over time as the regulatory environment and GHG control technologies change over time. If staff moves forward with recommending the Tier 4, compliance option #1 approach using BAU, it is likely that BAU would be established in the same manner the reduction target is established. As BAU changes, so does the reduction target. AB 32 Scoping Plan updates every five years can provide a balance between near-term certainty and evolution of feasible mitigation options.

Comment #9

The AQMD should specify what constitutes early compliance with AB 32 Scoping Plan measures.

Response #9

With regard to the Tier 4 compliance option #2, early compliance with AB 32 Scoping Plan measures, staff is recommending that further evaluation be conducted to address comments raised and to consider other approaches as appropriate. Specifically, CARB staff proposed a hybrid approach in their Draft Proposal that combines the AQMD's Tier 3 and Tier 4 concepts for stationary source projects. If CARB's board does not take final action on their interim GHG significance threshold proposal by February 2009, AQMD staff will report back in the following month regarding the viability of the Tier 4 performance standards, including early compliance with AB 32 Scoping Plan measures, and recommended actions, if any.

Comment #10

Compliance with AB 32 / SB 375 will result in a reduction in sector emissions from all sources; if compliant, a project should not require further analysis or mitigation under CEQA.

Response #10

The commentator's concept with regard to AB 32 is embodied in the Tier 4 performance standards approach and with regard to SB 375 is incorporated into Tier 2 for the residential/commercial sectors. Staff is recommending that both of these concepts be deferred (see response #9).

Comment 11

More information is needed concerning the economic and public policy implications of demanding fees to mitigate down to a questionably established significance level.

Response #11

First, AQMD staff's interim GHG significance threshold does not demand fees of any project. Consistent with CEQA, a project's GHG emissions must be quantified and a significance determination made. If impacts are concluded to be significant, feasible mitigation measures are required to be identified (CEQA Guidelines §15126.4). Measures to mitigate GHG emissions would be consistent with CEQA requirements. It is up to the lead agency and project proponent to determine if offsite mitigation measures, including offsets, are feasible for the project under consideration. Refer to response #1 with regard to the basis of the GHG screening levels.

Comment 12

Cost-effectiveness and the possibility of postponement of emission reduction measures during an economic crisis need to be factored in to the discussion.

Response #12

Economic factors are one component that determines whether mitigation measure is considered to be feasible (CEQA Guidelines §15364) and is determined on a case-by-case basis. See also to response #11.

Comment 13

Potential mitigation measures should include any combination of reducing emissions, providing carbon offsets, voluntary payment of fees to a validated GHG mitigation program (AQMD Climate Exchange), and making net improvements in energy efficiency or overall reduction of the state's carbon footprint

Response #13

The lead agencies have the discretion regarding the types of mitigation measures to be included in the CEQA document for a project and, ultimately, implemented by the project proponent. For the purposes of projects where the AQMD is the lead agency, staff is proposing a specific order of preference for GHG reduction measures for the Governing Boards consideration.

Comment 14

A sub-committee should be formed to develop appropriate methodology for developing GHG emissions inventories for CEQA projects.

Response #14

As part of its recommendation to the Governing Board relative to the interim GHG significance threshold for stationary source (industrial) projects, staff is recommending to initiate the work of developing inventory methodologies and compiling GHG emission factors to provide comprehensive guidance on quantifying a project's GHG emissions and the GHG reduction potential for GHG mitigation measures. Staff will seek input from the working group on this effort.

Comment 15

California Health & Safety Code §17958.5 (not §17958.8 by the commentator) does not allow the AQMD to impose efficiency requirements beyond Title 24. Title 24 is the statewide standard from which a local government should deviate only "because of local climactic, geological, or topographic conditions.

Response #15

Public Resources Code §§ 25402 and 25402.1 and Title 24, Part 1, § 10-106 specifically allow local governmental agencies to “adopt and enforce energy standards for newly constructed buildings, addition, alterations, and repairs” that are more stringent than the statewide standards. Several local governments have already adopted ordinances requiring more stringent energy requirements than Title 24, Part 6. See Local Ordinances Exceeding the California Building Energy Efficiency Standards, http://www.energy.ca.gov/title24/2005standards/ordinances_exceeding_2005_building_standards.html. Staff’s approach is consistent with CARB’s draft proposal on energy efficiency, which provides an option for determining CEQA significance and is not a regulatory mandate. Furthermore, staff is recommending that the provision in Tier 3 requiring residential/commercial projects to exceed Title 24 requirements be deferred until March 2009. Staff will also report to the Governing Board regarding progress by CARB on adopting a GHG significance threshold for residential/commercial projects.

Comment 16

Given that CARB is pursuing an accelerated process for adopting statewide GHG significance thresholds, AQMD should defer the entire staff proposal, including the components that apply to stationary source (industrial) projects where the AQMD is the lead agency.

Response #16

AQMD staff currently makes significance determinations for projects where it is the lead agency on a case-by-case basis. Staff believes it is prudent to adopt an interim GHG significance threshold that applies to industrial projects where it is the lead agency. AQMD staff acknowledges that CARB is in the process of developing statewide GHG significance and is following and participating in the process. For this reason, staff is recommending deferring adopting of GHG significance thresholds for projects where it is not typically the lead agency, i.e., residential/commercial projects. If CARB adopts its statewide GHG significance thresholds before March 2009, staff will report back to the Governing Board considering such thresholds for adoption.

Comment 17

Concern has been raised that AQMD staff’s proposed interim GHG significance threshold is biased against large projects. Large projects may include an exhaustive list of GHG reduction design features and measures, but still exceed the Tier 3 screening level by a wide margin.

Response #17

To address the issue of large residual GHG emissions from large projects after implementing all feasible GHG reduction design features and measures, staff’s interim proposal includes a performance standard approach in Tier 4. Specifically, Tier 4 compliance option 1, would allow large projects to be deemed insignificant for GHG emissions if it includes GHG reduction design features and/or measures that result in reducing GHG emissions 30 percent below BAU. Similarly, Tier 4, compliance option 3 consists of establishing a sector-based performance standard, e.g., pounds per square foot, for example, that could also be used to determine significance for large projects. Staff, however, is recommending deferring Tier 4 to allow additional time for analysis of this approach. Staff will report back to the Governing Board in March 2009 regarding this approach.