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Bay Area Air District Adopts Groundbreaking CEQA Thresholds of Significance for Greenhouse Gas Emissions

By David D. Cooke,
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On June 2, 2010, the Bay Area Air Quality Management District (BAAQMD) became the first regulatory agency in the nation to approve guidelines that establish thresholds of significance for greenhouse gas ("GHG") emissions from proposed development projects. The guidelines also establish levels of significance associated with other toxic emissions. These actions mark a significant development in the way GHG and other pollutant emissions are regulated indirectly in California through the project approval process.

The process of regulating GHG emissions directly began in California with the adoption of AB 32 in 2006. AB 32 requires the California Air Resources Board (CARB) to establish regulations designed to reduce California's statewide GHG emissions to 1990 levels by 2020. That effort is underway – although just this week, a statewide initiative to suspend the implementation of AB 32 until California's unemployment rate drops to 5.5% or less for four consecutive quarters qualified for the November ballot. (The impact, if any, of voter approval of such an initiative on actions such as the BAAQMD's adoption of CEQA thresholds for GHG emissions is uncertain at this point.)

Meanwhile, a debate has raged in the courts regarding the manner in which state and local agencies may, or must, evaluate the significance of GHG emissions from a project under the California Environmental Quality Act ("CEQA"). CEQA requires lead agencies to identify the significant environmental effects of the projects they approve, undertake or fund. When environmental effects are deemed to be "significant" (that is, they result in "a substantial or potentially substantial, adverse change in the environment"), CEQA generally requires that the lead agency identify "feasible" mitigation measures – based on considerations of available time, cost and other factors – to address these effects, and where such feasible measures exist, the project should not be approved without the imposition of such measures. In 2007, the Legislature enacted SB 97, which required the California Natural Resources Agency to adopt new CEQA Guidelines to address the analysis and mitigation of the potential effects of GHG emissions in CEQA documents and processes. This recent action by BAAQMD is the first attempt by an air district in California to establish

"The Air District's new comprehensive CEQA Guidelines provide tools for local agencies to use in making smart development decisions that protect residents from harmful air emissions and reduce greenhouse gases."

Jack Broadbent,
Executive Officer of BAAQMD

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quantifiable GHG emissions thresholds for use in CEQA documents to determine levels of significance in a GHG emissions analysis.

BAAQMD's detailed CEQA Air Quality Guidelines are available on its website [here](#).

The new GHG thresholds, which apply to all projects for which a Notice of Preparation was published, or environmental review commenced, on or after June 2, 2010, are very stringent:

- GHGs from projects other than stationary sources (that is, fixed sources of emissions that are subject to permitting by the air districts) are deemed to be "significant" if they exceed 1,100 metric tons of carbon dioxide equivalents per year, or 4.6 metric tons of carbon dioxide equivalents per year per resident or employee in the project's service population. However, if the project complies with a Qualified Greenhouse Gas Reduction Strategy, the GHG emissions are deemed to be not significant, and the numerical thresholds would not apply. A Qualified Greenhouse Gas Reduction Strategy must meet the criteria set forth in the recently adopted Section 15183.5 of the CEQA Guidelines. These criteria include requirements for quantification of existing and projected GHGs; development of a level of cumulative GHG emissions, including those from the project, that, based on substantial evidence, would not be considered significant for CEQA purposes; specification of measures and standards that would ensure that this level is achieved; and monitoring to track progress in achieving it.
- GHGs from "stationary sources" are significant if they exceed 10,000 metric tons per year.
- At the plan level (for instance, a city or county's general plan), GHG emissions associated with the adoption of the plan are deemed to be significant if they exceed 6.6 metric tons of CO2 equivalents per year per resident or employee in the service population. As with projects other than stationary sources, the numerical criteria otherwise applicable to plans can be avoided if the plan complies with a Qualified Greenhouse Gas Reduction Strategy under CEQA Guidelines Section 15183.5.

In the weeks and months leading up to the adoption of these new thresholds, BAAQMD published guidance documents that will help project proponents compute the GHG emissions from their projects. These include the *Draft Bay Area Air Quality Management District Greenhouse Gas Model User's Manual* (April 29, 2010) and the *GHG Plan Level Quantification Guidance* (April 15, 2010), which can be accessed on the BAAQMD website [here](#).

At the same time, BAAQMD also adopted new mechanisms for evaluating non-GHG related risk and hazard thresholds for the siting of new stationary sources and for new sensitive receptors. It also adopted lower thresholds of significance for annual emissions of reactive organic gases ("ROG"),

nitrogen oxides ("NO_x") and particulate matter ("PM-10") for exhaust, and set a standard for exhaust-related particulates (PM-10 and "PM-2.5") and for fugitive dust. All of these new thresholds went into effect, along with the GHG thresholds, on June 2, 2010, except for the thresholds applicable to new receptors, which become legally effective on January 1, 2011.

After adopting the new CEQA thresholds, BAAQMD's Board directed staff to track and regularly report to the Board on their implementation. In addition, the Board directed staff to:

- continue to work with the Metropolitan Transportation Commission and the Association of Bay Area Governments to ensure that implementation of the thresholds is consistent with the goals of SB 375, which establishes requirements for development of "sustainable communities strategies" with GHG emission reductions in mind;
- provide support and financial assistance to local governments for development and implementation of Community Risk Reduction Plans (CRRP);
- implement screening processes to help local governments avoid preparing a full EIR (based on air quality impacts) for projects that meet the thresholds; and
- continue to develop standardized mitigation measures.

The new thresholds have potential application only to projects in the geographical jurisdiction of the BAAQMD, which includes San Francisco, Marin, San Mateo, Santa Clara, Alameda, Contra Costa, and Napa Counties, plus southwestern Solano County and southern Sonoma County, and they only apply on the occasions when the BAAQMD is the "lead agency" for CEQA purposes. When the lead agency is not BAAQMD, a lead agency consulting with BAAQMD on the significant impacts of a project may well be influenced by its advice, but the lead agency is not legally bound by these thresholds. So long as it bases its decision on substantial evidence, it may apply the BAAQMD thresholds, apply other numerical thresholds, or apply no numerical thresholds at all.

Although the BAAQMD is the first air district to adopt numerical thresholds for GHG emissions, other air quality management or air pollution control districts around the state may follow suit. According to Jack Broadbent, executive officer of BAAQMD: "The Air District's new comprehensive CEQA Guidelines provide tools for local agencies to use in making smart development decisions that protect residents from harmful air emissions and reduce greenhouse gases." The full practical effect of the significance thresholds remains to be seen, but at a minimum they are likely to result in new and more comprehensive levels of environmental analysis, and to encourage project proponents and planning agencies to try to streamline approval or adoption through the adoption of Qualified Greenhouse Gas Reduction Strategies.

If you would like any further information concerning these issues and how

they may affect you, please feel free to contact the authors of this Alert directly.

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