

FILED

MAY 30 2013

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT  
**Sean Gallagher**  
Clerk of the Boards  
Bay Area Air Quality  
Management District

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6 BEFORE THE HEARING BOARD  
7 OF THE  
8 BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
9 STATE OF CALIFORNIA

10 In the Matter of the Appeal of POTRERO  
11 HILLS ENERGY PRODUCERS LLC and  
12 DTE BIOMASS ENERGY from Conditions of  
13 the Authority to Construct Requiring Selective  
Catalytic Reduction (SCR) as Best Available  
Control Technology (BACT) for the Landfill  
Gas to Energy Project, Permit Application  
Number 23333

DOCKET NO. 3644

ORDER REMANDING BACT  
DETERMINATION TO APCO

14 The above entitled matter having come before the Hearing Board as an Appeal by Potrero  
15 Hills Energy Producers LLC and DTE Biomass Energy (“Appellants”) pursuant to Bay Area Air  
16 Quality Management District (“District”) Rule 2-1-410, California Health and Safety Code  
17 Sections 42302.1 and 40800, *et seq.*, and Article 3 of the Hearing Board Rules, of conditions  
18 imposed by the District’s Air Pollution Control Officer (“APCO”) requiring Selective Catalytic  
19 Reduction (“SCR”) as cost-effective Best Available Control Technology (“BACT”) for nitrogen  
20 oxide (“NOx”) control in issuing an Authority to Construct in connection with Permit Application  
21 Number 23333 for Appellants’ Potrero Hills Landfill Gas to Energy Project (“Project”); and

22 Appellants having submitted an opening brief, reply brief, exhibits, and transcripts of  
23 evidentiary hearings in this matter, and the District having submitted an opposition brief, exhibits  
24 and request for official notice in this matter; and

25 The Hearing Board having heard evidence, testimony and argument from Appellants and  
26 the District on February 7, 2013, February 28, 2013, and March 21, 2013, in this matter, which  
27 included appearances by Christopher Locke, Esq., on behalf of Appellants and Nancy M. Wang,  
28 Esq., Assistant Counsel, on behalf of the APCO; and

ORDER REVERSING COST-EFFECTIVENESS DETERMINATION  
AND REMANDING FOR ACHIEVED IN PRACTICE ANALYSIS

1 The Hearing Board having provided the public with an opportunity to testify at each of the  
2 hearings, as required by the Health and Safety Code. No members of the public testified; and

3 The Hearing Board having considered such testimony, briefs, exhibits, requests for  
4 official notice, transcripts of evidentiary hearings and arguments of counsel, subject to the rulings  
5 of the Chair of the Hearing Board at the hearings on objections of the parties to certain exhibits  
6 and requests for official notice, and good cause appearing, following the close of evidence on  
7 March 21, 2013, the Hearing Board took the matter under submission. After deliberations and  
8 motions being made and voted upon by Hearing Board members, the Hearing Board issued an  
9 Order.

10 On May 2, 2013, after receiving a request from the District for reconsideration, and a  
11 reply from the Appellants, the Hearing Board voted to reconsider the matter on May 16, 2013.

12 On May 16, 2013, the Hearing Board voted to reopen the hearing for reconsideration of  
13 the remand of the permit to the APCO and for further deliberations and motions. No new  
14 evidence was heard as part of the reconsideration. The Hearing Board voted and passed a new  
15 motion to remand the Appellant's permit to the APCO for reevaluation.

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17 **BACKGROUND:**

18 1. On May 4, 2012, Potrero Hills Energy Producers LLC and DTE Biomass Energy  
19 (“Appellants”) submitted an application to the District for an Authority to Construct permit  
20 for a landfill gas to energy project at the Potrero Hills Landfill in Suisun City. The proposed  
21 project would collect landfill gas generated by decomposition of waste at the landfill and use  
22 the landfill gas to power generators expected to produce up to 8.0 megawatts of energy.

23 2. On October 29, 2012, DTE received an Authority to Construct permit and  
24 Engineering Evaluation from the District that required Selective Catalytic Reduction (SCR) to  
25 control NOx emissions from the generators. This requirement was based on a District BACT  
26 requirement described as BACT(1).

27 3. District Regulation 2-2-206 defines District BACT as the most stringent of four  
28 options, but these can be collapsed into two categories: (1) technology that is technologically

1 feasible and cost effective for a source, even if the technology has not yet been used in the  
2 field for that type of source (“BACT(1)”); or (2) the most effective emission control device  
3 that has been used, or emissions limitation that has been achieved, by a similar source  
4 elsewhere (“BACT(2)”) (see District Opposition Brief pages 5 & 6).

5 4. Evidence and testimony by both Appellant and District indicate the DTE Project is  
6 the first landfill gas-to-energy project required to use SCR for NOx control on landfill gas  
7 engines within the District's territory. A demonstration project known as the Ameresco Half  
8 Moon Bay project incorporated this technology on a voluntary basis and demonstrated the  
9 technical feasibility of the SCR technology for this type of facility, thus satisfying the District  
10 of the technical feasibility component of the BACT(1) determination.

11 5. The District's BACT Workbook specifies that in a BACT(1) determination, an  
12 abatement system is cost-effective for NOx if the annualized cost per ton is \$17,500 or less.  
13 Much evidence and testimony was presented to the Hearing Board by both parties on the cost  
14 effectiveness component of the BACT(1) determination with the two parties coming to  
15 different conclusions.

16 6. District utilized cost data from the Ameresco Half Moon Bay project, cost data  
17 from the South Coast Air Quality Management District, and data from other projects outside  
18 of the Air District's territory to estimate an acceptable component cost range for landfill gas to  
19 energy projects. For the evaluation of the cost effectiveness of NOx control at the DTE  
20 Project, the District determined that the exclusion of costs for landfill gas treatment and  
21 continuous emissions monitoring (CEMS) was appropriate based on the original application  
22 submitted by DTE. District applied its cost effectiveness evaluation methodology to two sets  
23 of cost data supplied by DTE: the original submission of cost data by DTE on March 9, 2012,  
24 and data based on the latest vendor quotes submitted on November 15, 2012. District  
25 eventually found the March 9 data to be within the acceptable component cost range it had  
26 defined. The November 15, 2012, data was found to be outside the acceptable component cost  
27 range. District determined that SCR was cost effective for NOx control for both sets of cost  
28 data.

1           7.       DTE presented its own calculation of the cost effectiveness of SCR for NOx  
2 control based on the November 15, 2012, cost data. DTE witness Steven Branoff presented  
3 testimony and evidence that its determination showed SCR for NOx control to not be cost  
4 effective even with landfill gas treatment and CEMS excluded. Testimony by the same  
5 witness also revealed DTE did not understand how the District analyzed the non-project-  
6 specific cost data available to it to determine the acceptable range of component costs.  
7 Testimony and evidence by DTE did not clearly explain why its input costs were above the  
8 cost range felt to be acceptable by the District although comments made during the closing  
9 statement suggested one reason might be geographic location of the facility.

10  
11 ORDER:

12           1.       The Hearing Board recognizes BACT(1) is intended to drive improved control  
13 technology forward, and the District should be commended for working to push the control  
14 technology forward on landfill gas to energy projects.

15           2.       Since the DTE Project would be the first non-voluntary use of this technology for  
16 such landfill gas to energy projects within the District, the District has a special responsibility  
17 to be thorough and open in its cost effectiveness analysis, including being especially careful to  
18 incorporate the best available cost data and to work with the Appellant to fully understand  
19 why the two parties reach different conclusions on cost effectiveness of SCR for NOx control.

20           3.       The Appellant has succeeded in raising concerns in the minds of Hearing Board  
21 members regarding the District's BACT(1) cost effectiveness determination of SCR for NOx  
22 control.

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BEFORE THE HEARING BOARD  
OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Appeal of )

POTRERO HILLS ENERGY PRODUCERS )  
LLC and DTE BIOMASS ENERGY )

From Conditions of Authority to Construct )  
Requiring Selective Catalytic Reduction as )  
Best Available Control Technology for the )  
Landfill Gas to Energy Project, Permit )  
Application Number 23333, Site No. n/a )  
\_\_\_\_\_ )

NO. 3644

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA )

City and County of San Francisco )

ss.

I, Sean Gallagher, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above entitled action; that I served a true copy of the attached Order Remanding BACT Determination to APCO on:

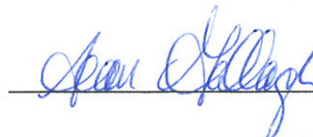
**Christopher Locke**  
**Farella Braun + Martel LLP**  
**235 Montgomery Street, 17<sup>th</sup> Floor**  
**San Francisco, CA 94104**

by depositing same in the United States certified mail, return receipt requested on May 30, 2013; and on

**Nancy Wang**  
**Assistant Counsel**  
**Bay Area Air Quality Management District**  
**939 Ellis Street, 7<sup>th</sup> Floor**  
**San Francisco, CA 94109**

by hand-delivery deposit of same in the in-box of the District Counsel's office, on May 30, 2013.

DATED: May 30, 2013



Sean Gallagher  
Clerk of the Boards