ATTACHMENT E

RESOLUTION NO. 19-1

A Resolution of the Governing Board of the South Coast Air Quality Management District (SCAQMD) certifying the Final Environmental Assessment (EA) for Proposed Rule 1118.1 – Control of Emissions from Non-Refinery Flares.

A Resolution of the SCAQMD Governing Board adopting Rule 1118.1 – Control of Emissions from Non-Refinery Flares.

WHEREAS, the SCAQMD Governing Board finds and determines with certainty that Proposed Rule 1118.1 is considered a "project" as defined by the California Environmental Quality Act (CEQA); and

WHEREAS, the SCAQMD has had its regulatory program certified pursuant to Public Resources Code Section 21080.5 and CEQA Guidelines Section 15251(l), and has conducted a CEQA review and analysis of Proposed Rule 1118.1 pursuant to such program (SCAQMD Rule 110); and

WHEREAS, the SCAQMD staff has prepared a Draft EA pursuant to its certified regulatory program and CEQA Guidelines Sections 15251, 15252, and 15070 setting forth the potential environmental consequences of Proposed Rule 1118.1; and determined that the proposed project would not have a potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft EA was circulated for a 32-day public review and comment period, from October 26, 2018 to November 27, 2018, and three comment letters were received; and

WHEREAS, the Draft EA has been revised to include comments received on the Draft EA and the responses, so that it is now a Final EA; and

WHEREAS, it is necessary that the SCAQMD Governing Board review the Final EA prior to its certification to determine that it provides adequate information on the potential adverse environmental impacts that may occur as a result of adopting Proposed Rule 1118.1 – Control of Emissions from Non-Refinery Flares, including responses to comments received relative to the Draft EA; and

WHEREAS, pursuant to CEQA Guidelines Section 15252 (a)(2)(B), since no significant adverse impacts were identified, no alternatives or mitigation measures are required and thus, a Mitigation Monitoring and Reporting Plan pursuant to Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097, has not been prepared; and

WHEREAS, Findings pursuant to Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091 and a Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093 were not prepared because the analysis shows that Proposed Rule 1118.1 would not have a significant adverse effect on the environment, and thus, are not required; and

WHEREAS, the Final EA reflects the independent judgment of the SCAQMD; and

WHEREAS, the SCAQMD Governing Board finds and determines that all changes made in the Final EA after the public notice of availability of the Draft EA, were not substantial revisions and do not constitute significant new information within the meaning of CEQA Guidelines Section 15073.5 or 15088.5, because no new significant effects were identified, and no new project conditions or mitigation measures were added, and all changes merely clarify, amplify, or make insignificant modifications to the Draft EA, and recirculation is therefore not required; and

WHEREAS, the SCAQMD Governing Board finds and determines, taking into consideration the factors in Section (d)(4)(D) of the Governing Board Procedures (codified as Section 30.5(4)(D)(i) of the Administrative Code), that the modifications to Proposed Rule 1118.1 since notice of public hearing was published add clarity that meet the same air quality objective as the rule proposed with the 30-day notice and are not so substantial as to significantly affect the meaning of the proposed rule within the meaning of Health and Safety Code Section 40726 because: (a) the changes do not impact emission reductions, (b) the changes do not affect the number or type of sources intended to be regulated by the rules, (c) the changes are consistent with the information contained in the notice of public hearing, and (d) the consideration of the range of CEQA alternatives is not applicable because the effects of Proposed Rule 1118.1 do not cause significant impacts, therefore, alternatives are not required; and

WHEREAS, Proposed Rule 1118.1 will be submitted for inclusion into the State Implementation Plan; and

WHEREAS, the SCAQMD staff conducted a Public Workshop regarding Proposed Rule 1118.1 on October 17, 2018; and

WHEREAS, Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the staff report; and

WHEREAS, the SCAQMD Governing Board has determined that Proposed Rule 1118.1 is needed to establish a source specific rule for non-refinery flares as directed by Control Measure CMB-03 of the Final 2016 Air Quality Management Plan and to transition non-refinery flare facilities in the RECLAIM program to a command-and-control regulatory structure requiring Best Available Retrofit Control Technologies to reduce NOx emissions as directed by Control Measure CMB-05 of the Final 2016 Air Quality Management Plan; and

WHEREAS, the SCAQMD Governing Board obtains its authority to adopt, amend or repeal rules and regulations from Sections 39002, 40000, 40001, 40440, 40441, 40702, 40725 through 40728, 41508, and 41511 of the Health and Safety Code; and

WHEREAS, the SCAQMD Governing Board has determined that Proposed Rule 1118.1 is written or displayed so that the meaning can be easily understood by the persons directly affected by it; and

WHEREAS, the SCAQMD Governing Board has determined that Proposed Rule 1118.1 is in harmony with and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations; and

WHEREAS, the SCAQMD Governing Board has determined that Proposed Rule 1118.1 will not impose the same requirements as any existing state or federal regulations. The proposed rule is necessary and proper to execute the powers and duties granted to, and imposed upon, SCAQMD; and

WHEREAS, the SCAQMD Governing Board has determined that there is a problem that Proposed Rule 1118.1 will alleviate which is to adopt a rule to control an unregulated source of emissions and the proposed rule adoption will promote the attainment or maintenance of state or federal ambient air quality standards pursuant to Health and Safety Code Section 40001 (c); and

WHEREAS, the SCAQMD Governing Board, in adopting Rule 1118.1, references the following statutes which the SCAQMD hereby implements, interprets, or makes specific: Health and Safety Code Sections 39002, 40000, 40001, 40702, 40440(a), and 40725 through 40728.5; and

WHEREAS, the SCAQMD Governing Board has determined that the Socioeconomic Impact Assessment of Proposed Rule 1118.1 is consistent with the March 17, 1989 Governing Board Socioeconomic Resolution for rule adoption; and

WHEREAS, the SCAQMD Governing Board has determined that the Socioeconomic Impact Assessment is consistent with the provisions of Health and Safety Code Sections 40440.8, 40728.5, and 40920.6; and

WHEREAS, the SCAQMD Governing Board has determined Proposed Rule 1118.1 will result in increased costs to the affected industries, yet are considered to be reasonable, with a total annualized cost as specified in the Socioeconomic Impact Assessment; and

WHEREAS, the SCAQMD Governing Board has actively considered the Socioeconomic Impact Assessment and has made a good faith effort to minimize such impacts; and

WHEREAS, some facilities affected by Proposed Rule 1118.1 are RECLAIM facilities and SCAQMD Rule 2002 – Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) provides an option for these facilities to remain in RECLAIM if they receive a Final Determination to exit RECLAIM; and

WHEREAS, the SCAQMD Governing Board directs staff to resolve NSR issues prior to forcing any facilities to exit out of RECLAIM; and

WHEREAS, the SCAQMD specifies that the Planning and Rules Manager of Proposed Rule 1118.1 is the custodian of the documents or other materials which constitute the record of proceedings upon which the adoption of this proposed rule is based, which are located at the South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California; and

WHEREAS, a public hearing has been properly noticed in accordance with the provisions of Health and Safety Code Section 40725 and 40440.5; and

WHEREAS, the SCAQMD Governing Board has held a public hearing in accordance with all applicable provisions of state and federal law; and

NOW, THEREFORE BE IT RESOLVED, that the SCAQMD Governing Board has considered the Final EA for Proposed Rule 1118.1 together with all comments received during the public review period, and, on the basis of the whole record before it, the SCAQMD Governing Board finds that the Final EA was completed in compliance with CEQA and the SCAQMD's Certified Regulatory Program, and that it is presented to the SCAQMD Governing Board, whose members exercised their independent judgment and reviewed, considered and approved the information therein prior to acting on Proposed Rule 1118.1; and

BE IT FURTHER RESOLVED, that because no significant adverse environmental impacts were identified as a result of implementing Proposed Rule 1118.1, Findings pursuant to Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091, a Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093, and a Mitigation Monitoring and Reporting Plan pursuant to Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097 are not required; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board directs staff to work with the California Air Pollution Control Officers Association, California Department of Resources Recycling and Recovery, California Association of Sanitation Agencies and Southern California Alliance of Publicly Owned Treatment Works in an effort to balance air quality requirements with the state-wide effort to divert organics from landfills as required under Senate Bill 1383, and shall report back to the Stationary Source Committee within 12 months of rule adoption to present findings and potential recommendations; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board directs staff to work with stakeholders to conduct a BACT technical assessment for flares receiving biogas derived from advanced digestion and/or organic waste digestion or co-digestion that considers costs, review the current scientific literature, existing measurement methods, technology achieved in-practice, reliability issues, and if necessary, field testing. SCAQMD staff shall report back to the Stationary Source Committee within 12 months of rule adoption to present findings; potential recommendations; and amend the BACT Guidelines and Rule 1118.1, if necessary; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board directs staff to conduct a technology assessment of various technologies, techniques, approaches, and associated costs to beneficially use gas to reduce flaring and to report a summary of the technology assessment to the Stationary Source Committee within 24 months of rule adoption and amend the requirements for flaring produced gas if deemed appropriate; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board does hereby adopt, pursuant to the authority granted by law, Proposed Rule 1118.1 as set forth in the attached, and incorporated herein by reference; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board requests that Proposed Rule 1118.1 be submitted into the State Implementation Plan; and

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution and Proposed Rule 1118.1 to the California Air Resources Board for approval and subsequent submittal to the U.S. Environmental Protection Agency for inclusion into the State Implementation Plan.

AYES: Benoit, Burke, Lyou, McCallon, Mitchell, Parker, Perez, Robinson and Rutherford

NOES: None

ABSENT: Buscaino, Cacciotti, Hahn and Nelson

DATE: January 4, 2019

Denise Garzaro, Clerk of the Boards