ORIGINAL

APPLICATIONS:

# APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

## 1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☑ Area Planning Commission ☐ City Planning Commission ☐ City Council ☐ Director of Planning

Regarding Case Number: ZA-15227(O)(PA5)

Project Address: 2126 West Adams Boulevard

Final Date to Appeal: 07/15/2016

Type of Appeal:
☑ Appeal by Applicant/Owner
☐ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

## 2. APPELLANT INFORMATION

Appellant's name (print): Steven P. Rusch, Vice-President

Company: Freeport-McMoRan Oil & Gas LLC

Mailing Address: 5640 South Fairfax Avenue

City: Los Angeles State: California Zip: 90056

Telephone: (323) 298-2223 E-mail: srusch@fmi.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  ☑ Self ☐ Other: _____

- Is the appeal being filed to support the original applicant's position? ☑ Yes ☐ No

## 3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail: _____

## 4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☐ Entire ☑ Part

Are specific conditions of approval being appealed? ☐ Yes ☑ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

## 5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 7/14/2016

## 6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

| This Section for City Planning Staff Use Only | | |
|---|---|---|
| Base Fee: 4890.90 | Reviewed & Accepted by (DSC Planner): JOHN DACEY | Date: 7/14/16 |
| Receipt No: 30830 | Deemed Complete by (Project Planner): | Date: |
| ☐ Determination authority notified | ☑ Original receipt and BTC receipt (if original applicant) | |

## JUSTIFICATIONS FOR APPEAL OF CASE NO. ZA-15227(O)(PA5)

Pursuant to Sections 13.01 and 12.24(I) of the Los Angeles Municipal Code ("LAMC"), Freeport-McMoRan Oil & Gas LLC (the "Applicant"), the applicant in Case No. ZA-15227(O)(PA5) ("Plan Approval 5"), appeals the denial of the Applicant's request pursuant to Plan Approval 5 to allow "methods and conditions for the installation and use of a Clean Enclosed Burner ("CEB 800") and appurtenant sound attenuation wall at an existing oil drilling site located within Oil Drilling District U-37, and modification of Condition No. 49 of Section 13.01-F with respect to hours of operation during project construction to allow delivery of over-sized loads between the hours of 8:00 p.m. and 6:00 a.m."

Specifically, the Applicant appeals the Zoning Administrator's denial of Plan Approval 5 and the following specific aspects of its determination:[1]

(1) the Zoning Administrator's erroneous determination that an Initial Study would have been required if an approval were to be granted;

(2) the Zoning Administrator's erroneous determination that Plan Approval 5 should be denied because the CEB is not "enclosed" and therefore violates an applicable condition of approval (when in fact there is no such condition in the existing entitlements);

(3) the Zoning Administrator's reliance on unsubstantiated information never shared with the Applicant regarding alleged concerns about fire or public safety impacts; and

(4) the Zoning Administrator's erroneous determination that Plan Approval 5 should be denied because the CEB is not related to the "production" of oil, and therefore not appropriately located in the Murphy Drill Site.

In filing this Appeal, the Applicant respectfully requests that the Area Planning Commission approve Plan Approval 5 and allow the installation of the CEB 800.[2]

### BACKGROUND

The CEB 800 is a piece of mechanical equipment that will provide an additional means of disposing of "off-spec" gas from the well operations and maintenance of the oil wells (constituents of natural gas streams that are required by order of the California Public Utilities Commission to be removed prior to the gas being put into the sales pipeline) at the existing Murphy Drillsite. The CEB 800 will add additional capacity to dispose of the off-spec gas, and will act as an essential supplement to and back-up system for the existing micro-turbines on the site. The operational capability of the existing micro-turbines can fluctuate based on factors beyond the control of the site operator and maintenance needs on existing equipment (among other reasons) so the CEB 800 creates the capacity for the facility to operate even when the

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[1] The Applicant does not appeal the Zoning Administrator's finding (Finding Number 1, which was fully and separately discussed on page 13 of the Determination Letter in a section entitled "Use of Southern Portion of Property") that the entire approximately 3.25-acre parcel, including the southerly "landscaped" portion of the site, is part of the approved Drill Site and that there are no conditions of approval or other requirement that the site be opened for public use.

[2] To be clear, the Applicant also vigorously disputes any implication in the Determination Letter that the CEB 800 is not cleaner than existing turbines located on the Drill Site.

micro-turbines are unavailable. As such, the CEB 800 supports (and is directly related to) implementation of previously approved well operations and previously approved methods and conditions for maintaining oil wells and does so without an expansion of use. Installation of the new CEB 800 is *not* required for the property owner to be able to drill and operate the previously approved wells (as is evidenced by the fact the two new wells drilled in 2014 are now online and operational). However, the CEB 800 is required for the prudent and efficient operation of the existing facilities as it allows the operator enhanced abilities to minimize operational interruptions while dealing with unexpected maintenance and equipment issues. It is absolutely related to the oil production activities on the site, and would not be necessary except in conjunction with maintaining the production activities during times when equipment is unavailable. The proposed CEB 800 enclosure area represents approximately 1% of the total area of the Murphy Drillsite and is designed to completely obscure the CEB 800 equipment from public view, and. as acknowledged in the Determination Letter dated June 30, 2016 ("Determination Letter"), will not cause any emissions or other impacts in excess of applicable thresholds of significance.

**THE APPLICATION FULLY COMPLIED WITH CEQA AND NO INITIAL STUDY IS REQUIRED UNDER CEQA**

The Zoning Administrator's Determination Letter confirms that the installation of the CEB 800 would not reach the City's California Environmental Quality Act ("CEQA") thresholds of significance. However, despite this factual conclusion, the Determination Letter goes on to state that an Initial Study should have been required because an Initial Study would "change the look of the available date and express[] the data in a form more familiar to those using the information." This purported justification for requiring an Initial Study is contrary to (and has no basis in) the plain language of CEQA, the CEQA Guidelines and binding California Supreme Court precedent. Indeed, as set forth below, an Initial Study is neither required by CEQA nor may it properly by required by the City in this instance.

Specifically, preparation of an Initial Study occurs only after a local agency determines that a proposed project *is subject to CEQA*. *See* CEQA Guidelines § 15060 (c) ("a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study"). In this case, Plan Approval is exempt from CEQA pursuant to CEQA Section 21084 and therefore no Initial Study may properly be required by the City.

Section 21084 of the California Public Resources Code directs the establishment of classes of projects that the Secretary of Natural Resources has determined to be exempt from CEQA review. These "categorically exempt" classes of projects are set forth in Section 15300 *et seq.* of the CEQA Guidelines, and include:

- Class 1, Category 2: Operation, repair, maintenance or minor alteration of existing facilities of both investor and publicly owned utilities, electrical power, natural gas, sewage, water, and telephone, and mechanical systems serving existing facilities, including alterations to accommodate a specific use (CEQA Guidelines § 15301);
- Class 1, Category 6: Addition of safety, security, health or environmental protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features (including navigational devices) (*Id.*);

- Class 1, Category 32: Installation, maintenance or modification of mechanical equipment and public convenience devices and facilities which are accessory to the use of the existing structures or facilities and involve the negligible or no expansion of use (*Id.*);
- Class 3, Category 4: Installation of new equipment and/or industrial facilities involving negligible or no expansion of use if required for safety, health, the public convenience, or environmental control (CEQA Guidelines § 15303); and
- Class 5, Category 23: Granting or renewal of a variance or conditional use for a non-significant change of use of land (CEQA Guidelines § 15305).

As more fully set forth in the administrative record, each of these Categorical Exemptions is applicable to Plan Approval 5. Notably, the Zoning Administrator's decision does not cite any statutory or case law authority as to why the cited Categorical Exemptions are applicable to this application. Moreover, none of the possible exceptions to the applicability of the Categorical Exceptions set forth in CEQA Guidelines Section 15300.2 are applicable to Plan Approval 5. And, the Zoning Administrator expressly found that the CEB 800 emissions did not meet the thresholds of significance, writing: "the data from the SCAQMD still would not have reached the thresholds of significance of both the City and the SCAQMD. . . ." Instead, the Determination Letter presents a novel and wholly arbitrary test that finds, even though the adopted thresholds would not be exceeded, because there would be "a rather large amount of pollutants emitted into the air. . ." the otherwise applicable exemptions cannot be utilized. This unique reading of CEQA is at odds with established precedent and fundamental CEQA precepts.

In *Berkeley Hillside Preservation v. City of Berkeley*, the California Supreme Court emphasized that for projects that meet the requirements of a categorical exemption, a party challenging the exemption has the burden of producing evidence supporting an exception. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1104) Accordingly, the Zoning Administrator's assertion on Page 12 of the Determination Letter that Plan Approval 5 should be denied and an Initial Study should be required because "the back-up information for the Categorical Exemption did not contain any information on why the installation of the CEB 800 would not reach a level of significance but instead was based on legal reasoning why a Categorical Exemption was valid" reverses the burden of proof established by the California Supreme Court. Moreover, the applicability of the Categorical Exemption is, if anything, strengthened by the fact that the Zoning Administrator cited information in the case file from the South Coast Air Quality Management District ("SCAQMD") showing that the CEB 800 would not cause significant air quality impacts and that the sound wall would reduce the potential noise that would be generated by the facility. The fact that the Zoning Administrator looked through three files to make this factual determination is not relevant to the exemption determination. The applicant did not have to prove a negative in order to be able to rely on the exemptions provided under the law.

**THE REQUIREMENT THAT THE CEB 800 BE ENCLOSED IS NOT APPLICABLE TO THIS DRILL SITE AND CANNOT PROPERLY FORM THE BASIS FOR DENIAL**

The Zoning Administrator cites to Condition No. 52 contained in LAMC Section 13.01 (which requires that all "equipment necessarily incident to such production [be] completely enclosed within a building") as a basis for denying Plan Approval 5. However, Condition No. 52 is not

applicable to the Murphy Drill Site and this determination is therefore erroneous as a matter of law.

LAMC Section 13.01 contains some standard conditions that are applicable to all oil drilling districts (*e.g.*, section 13.01(E)(2)). In contrast, Condition 52 is contained in LAMC Section 13.01(F), which contains *possible* conditions that may be applicable to a given drill site, but only if they are imposed in the ordinance establishing the districts or by the Zoning Administrator in determining the drill site requirements ("the City Planning Commission *may* recommend conditions for [City Council] consideration. Some of these additional conditions, which *may* be imposed in the ordinance establishing the districts or by the Zoning Administrator in determining the drilling site requirements, and which *may* be applied by reference, are as follows") (*emphasis added*). Neither the ordinance establishing the Murphy Drill Site (Ordinance No. 114,701) nor any of the subsequent Zoning Administrator determinations imposing requirements for drilling on the site imposed *optional* Conditional 52 on the Murphy Drill Site. And, the Zoning Administrator's determination does not cite to any authority purporting to impose this requirement on this particular Drill Site. Thus, the purported failure to comply with Condition 52 cited on Page 18 of the Determination Letter is not a valid basis for denying Plan Approval 5.

**THE ZONING ADMINISTRATOR ERRED IN RELYING ON UNSUBSTANTIATED AND ILL-DEFINED CONCERNS THAT THERE COULD BE FIRE SAFETY IMPACTS OF THE CLEAN ENCLOSED BURNER; THE CITY'S RELIANCE ON SUCH INNUENDO WITHOUT PROVIDING THE APPLICANT WITH AN OPPORTUNITY TO RESPOND DEPRIVED THE APPLICANT OF ITS FOURTEENTH AMENDMENT DUE PROCESS RIGHTS.**

The CEB 800 was approved by the Los Angeles Fire Department on October 9, 2013. Despite this approval, and the absence of any evidence provided either to the applicant or during the public hearing, the Zoning Administrator's Determination Letter contains vague references that "it would be problematic as to whether the Fire Department would sign off on such a facility within an enclosed building in a residential neighborhood" (page 18), "that the open air nature of a flare . . . was also a concern to the Chief", and the seemingly hyperbolic assertion that the Fire Department has expressed concern over fire safety of an open air flare during Santa Ana wind conditions when . . . "jetsam could blow through the flare, ignite and become flaming missiles in a residential neighborhood." (Determination Letter pages 13, 18-19)

These concerns, if truly expressed, were never made known to the Applicant and thus deprived both the Applicant and the public the assurance that the Zoning Administrator's determination would be supported by facts in the record. Indeed, the assertions cited above are unsupported by the technical specifications of the CEB 800 and contradicted by the substantial evidence introduced during the May 12, 2015 public hearing and in the Applicant's "response to comments" letter that was submitted to the case file and dated August 13, 2015 (see page 7 of that letter). In fact, the administrative record contains substantial information describing in detail the emergency safety measures in place at the Murphy Drill Site. The unsubstantiated claims cited in the denial do not address or even acknowledge the existence of the substantial fire protection systems in place, nor is there any effort made to explain why these systems are inadequate. In addition the unsubstantiated claims are directly contradicted by the Fire Department's previous written approval of the CEB 800 installation. The purported justifications for denial therefore amount to nothing more than argument and unsupported

innuendo. They therefore do not provide a proper basis for making the required determination under CEQA and LAMC section 13.01.

**THE ZONING ADMINISTRATOR ERRED IN DETERMINING THAT BECAUSE THE CEB 800 IS NECESSARY FOR REDUNDANCY, IT IS NOT ESSENTIAL FOR OPERATION OF THE DRILL SITE.**

Even though the CEB 800 is not related to the drilling of any particular well, it is absolutely related to—and essential for—oil production on the site because it is needed as an essential back-up to ensure that the production already authorized and already occurring at the Murphy Drill site can continue uninterrupted, using the best available methods. Indeed, the CEB 800 is only necessary because there is oil production taking place on the site. As explained in further depth below, the Zoning Administrator's determination that the CEB 800 is not related to oil production because it provides essential engineering redundancies is analogous to arguing that multiple engines on a passenger plane are not "essential." The plane could fly with only one engine, but no responsible pilot would begin a flight without redundant engines in place for the protection of the passengers. The same can be said for the operation of the Murphy Drill Site and the CEB 800: prudence and efficient maintenance and operations of oil production demand that the CEB 800 be installed.

In particular, we agree with the Zoning Administrator's statement, at page 6 of the Determination Letter, that the CEB 800 is not related to specific well drilling activities (which are different from oil production activities) on the Drill Site, and that the CEB 800 provides engineering redundancy (e.g. essential back-up) by providing an additional means of removing natural gas when the micro-turbines are unavailable, the gas fails to meet the specifications for sales to the Southern California Gas Company, or there is not enough capacity to reinject the gas into the ground. Further, the Determination Letter accurately cites to Condition 46, which requires that "proven technological improvements in drilling and *production* methods shall be adopted as they may become, from time to time, available." (*emphasis added*) As noted in the Determination Letter at page 7, the CEB 800 is classified as Best Available Control Technology by the SCAQMD.

Unfortunately, after accurately citing the above facts, Finding No. 4 (page 16 of the Determination Letter) then conflates the common dictionary definition of "redundancy" with the engineering justification for utilizing "redundant" means of removing natural gas. Use of "redundancy" in the engineering context applicable to the CEB 800 results in an alternative and, at times, alternative means of disposing of off-spec gas, thereby enabling oil production activities to continue when the other methods of gas removal are not available, for example when the turbines are down for repairs. The CEB 800 therefore allows for an overall reduction in the emission of air pollutants as compared to the turbines (see attached table) and compliance with the Condition No. 46 mandate to use best available production methods.[3]

Thus, in sum, the CEB 800 is absolutely related to oil production at the Murphy Drill Site.

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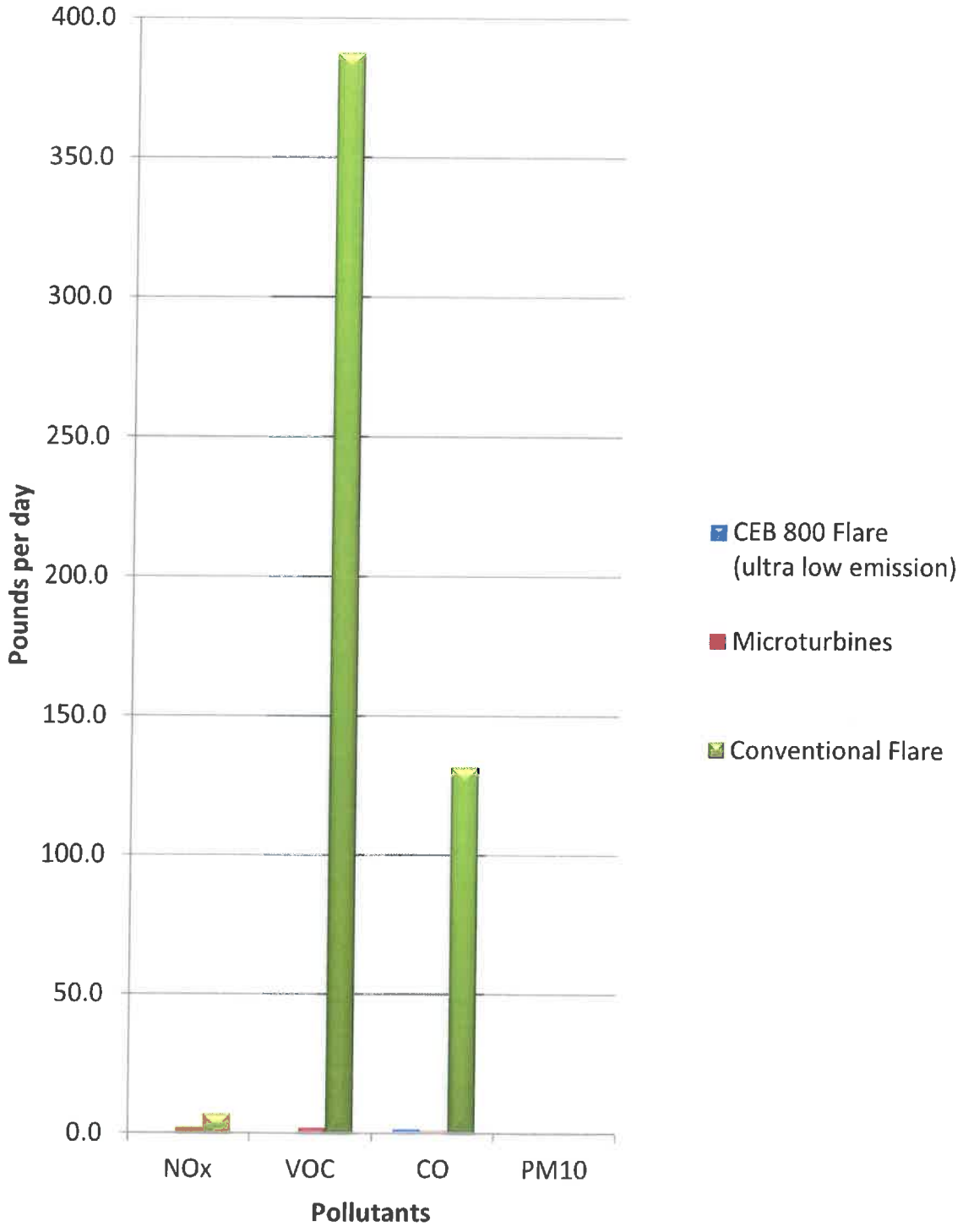
[3] The Oxford U.S. English Dictionary also includes the engineering definition of redundancy: "not strictly necessary to functioning but included in case of failure in another component." The Determination Letter ignored this second, and more pertinent, definition. If the correct definition is utilized, the direct necessity for the CEB 800 is readily apparent.

## HARM SUFFERED BY THE APPLICANT AS A RESULT OF THE ZONING ADMINISTRATOR'S ERROENOUS FINDINGS AND WRONGFUL DENIAL OF PLAN APPROVAL 5

The Zoning Administrator's errors cited above deprive the Applicant of the ability to operate its Drill Site in a manner that will ensure that ongoing oil production at the Drill Site occurs in the manner required by law, including the City's conditions of approval requiring the use of best available technology.

The Applicant has invested substantial resources into the operation of the Murphy Drill Site and it is committed to pursuing the best possible means of continuing the Drill Site's convenient, safe and efficient operations through the installation of the CEB 800. The Zoning Administrator's denial of Plan Approval 5 deprives the Applicant of its ability to do so. This Appeal asks the Area Planning Commission to correct the errors identified in this appeal and approve Plan Approval 5, including the installation of the CEB 800.

# Emission Comparison (50 MCFD)



# Emission Comparison (50 MCFD)