

DOCKETED

Docket Number:	08-AFC-08A
Project Title:	Hydrogen Energy Center Application for Certification Amendment
TN #:	201872
Document Title:	AIR Status Report March 2014
Description:	update on Savage facility expansion
Filer:	Tom Frantz
Organization:	Association of Irritated Residents
Submitter Role:	Intervenor
Submission Date:	3/13/2014 9:11:25 AM
Docketed Date:	3/13/2014

Association of Irrigated Residents (AIR)
Tom Frantz, President
29389 Fresno Ave
Shafter, CA 93263

March 13, 2014

California Energy Commission

RE: HECA docket # 08-AFC-8A

AIR Status Report for March 2014

AIR attended the Wasco Planning Commission meetings of January 13, 2014 and February 10, 2014 where the Savage coal facility expansion was considered.

The public agenda for both meetings had an item called "...an amendment to Conditional Use Permit 489-87 to increase operating capacity from 900,000 tons of sub-bituminous coal per year to 1,500,000 tons of non-metallic minerals per year" .

According to the City of Wasco Planning Department this amendment is to bring the 1987 Wasco Savage coal facility CUP into conformity with the Kern County air district Authority to Construct permit from 1987. The key difference between the two permits was the Wasco CUP allowed an annual maximum of 900,000 tons of coal to be unloaded from rail and loaded onto trucks and the ATC from the air district allowed 1.5 million tons. The amendment would change the CUP to allow 1.5 million tons annually.

A few new conditions were also added to the CUP that would allow a change in the direction of the trucks leaving the facility, some funding for repair to damage from trucks on local roads, and an increase in operating hours for the unloading of coal from 8 (or 15) hours per day to 20 hours per day.

On January 13, 2014 the Planning Commission heard from Mr. Fred Busch of Savage who explained briefly the expansion. Several members of the public spoke in opposition to this expansion and suggested that Wasco should at least perform an Environmental Impact Report before approving the amendment.

Three members of the Planning Commission said they wanted more time and information about the project before making a decision so the item was continued until February 10, 2014.

At the February 10 meeting, Mr. Mobley (Chief City Planner) gave the Planning Commission more information including a brief response to some of the comments that had been sent in writing from the public. He mentioned coal dust and said it would be significantly less than what a member of the public had stated. The Planning Commission refused to take any public comment at the February 10 meeting and also said that

comment letters which had been sent since the previous meeting in January 13 were also not being considered. They voted unanimously to approve the amendment.

Members of the public protested during public comments that it was not fair or legal for the Planning Commission to refuse public comment since the item was on the public agenda. The Planning Commission chair stated that the item was continued from the January meeting when public comment was closed and that public comment would not be reopened. There were some Wasco residents who had come to this meeting in order to speak about the project but they were not allowed.

The decision to approve the amendment has since been appealed by members of the public to the Wasco City Council. The appeal was made on February 16, 2014 (copy below). No date, as of this writing, has been set for the appeal hearing.

The refusal to hear public comment at the Planning Commission meeting of February 10 has been formally protested with a Brown Act Complaint to the Planning Commission. This complaint (copy below) was filed on February 16, 2014. As of this writing, no response has been made to this complaint by the Wasco Planning Commission. Their regular scheduled monthly meeting for March of 2014 has been cancelled.

AIR feels there are serious issues not being addressed with this proposed amendment to the Savage Coal facility in Wasco.

The expansion from 900,000 tons to 1.5 million tons annually is solely to provide a coal supply for the HECA project. Without HECA the Savage Coal facility would be most likely closed down. In the past year, coal deliveries to Wasco have virtually stopped. The power plants in Kern County which have traditionally received coal from Savage have stopped taking it. Over the past several years, coal deliveries have been well under the average delivery rate of 500,000 tons annually since the beginning of operation over 25 years ago.

AIR suggests that a thorough analysis of the impacts on the City of Wasco and on nearby residents and surrounding communities must be completed before this expansion can be approved. Since the City of Wasco has refused to do this analysis then the California Energy Commission cannot move forward with any HECA permit approvals until they have analyzed this project. **The equivalent of an EIR must therefore be performed by the CEC for this Savage coal facility expansion in the City of Wasco.**

When the Savage project was first proposed in 1987, the California Air Resources Board told the City of Wasco that an EIR was needed. Wasco did not agree and did a negative declaration instead. In other words, the original project for 900,000 tons was not adequately analyzed. This huge expansion to 1.5 million tons requires that the analysis lacking in 1987 plus any new requirements under CEQA now be required. Below is a copy of the ARB letter to the City of Wasco in 1987.

1102 Q STREET
P.O. BOX 2815
SACRAMENTO, CA 95811

ARB

April 30, 1987



Mr. Walter E. Cairns
Planning Director
City of Wasco
P.O. Box 159
Wasco, CA 93280

Dear Mr. Cairns:

Environmental Consultation for
Wasco Coal Transfer Station, CUP # 489/87

This letter is in response to your April 7, 1987 request to evaluate the environmental assessment for the Wasco coal transfer station, as our area of expertise pertains to the application. Specifically, you have asked us to provide recommendations for determining the need of an Environmental Impact Report (EIR) or a Negative Declaration (ND).

Project Description:

The Wasco coal transfer station is an independent receiving and storage facility for coal delivered by trains. The station will consist of four covered bins able to store 36,000 tons of coal. Covered trucks will transport the coal to the consumer facilities.

Comments:

We recommend that an EIR be prepared for the Wasco coal transfer station project. Our recommendation is based upon the potential cumulative air quality impact of this facility in conjunction with several coal-burning facilities which have received permits to construct. In Kern County, four coal-burning electric generating facilities totaling 142 MW have been permitted. These four facilities will emit 3,274 pounds per day of NOx, 574 pound per day of PM, and 1,572 pound per day of SOx. Additionally, several other projects are proposed in Kings County and Fresno County.

To ensure a thorough analysis of this project's potential air quality impact, we suggest the following information be included in the Draft EIR.

1. A description of the proposed project, including its location, technical information on the processes, normal and maximum operational parameters, start-up date, operating schedule, the increase in truck traffic and other air quality related features such as influences on traffic circulation patterns;

2. Descriptions of the existing air quality at the proposed project site and adjacent areas, topographical and meteorological features that may affect pollutant dispersion, proximity of receptors (e.g. hospitals, schools, the general population, and agricultural vegetation), and the locations of other nearby emission sources including the above mentioned projects;
3. Estimates of the average and highest emission rates of criteria and noncriteria air pollutants. These estimates should reflect both the controlled and uncontrolled emissions as well as the air pollution control technologies used at the facility. Additionally, the secondary emissions from increased truck traffic should also be quantified. The bases for the assumptions and calculation methods used to determine these estimates should be clearly stated;
4. Descriptions of the equipment, processes, or other measures designed to reduce emissions of criteria and noncriteria pollutants;
5. A discussion of the potential health effects of any noncriteria pollutants;
6. A discussion of the project's potential to induce population, commercial, or industrial growth and any concomitant increase of air pollutant emissions within the City of Wasco and Kern County;
7. A discussion of all applicable local, state, and federal air quality statutes and regulations applicable to the project (include a discussion of how the proposed project would meet the Kern County Air Pollution Control District's rules and regulations);
8. A description of similar sources, existing or proposed, in California and a discussion of the control requirements applicable to these sources;
9. A discussion of all project alternatives and their associated emissions.

There are contradictions in the analysis and permits from 1987 that need consideration. Wasco claims the only amendment needed is to increase the capacity stated in the CUP to match the Air District ATC. It is stated in the ATC that 1.5 million tons is the annual process weight limit for the facility. Contradicting that weight limit is the condition in the ATC that the facility operate no longer than 8 hours per day in regards to unloading rail cars and loading and unloading of the four coal silos. Only truck loading is authorized to operate for up to 20 hours per day. If the operation of the facility is increased from 8 hours per day up to 20 hours per day, then the Air District ATC must be amended as well as the Wasco CUP.

OPERATIONAL CONDITIONS:

- a. Storage bin and fabric collector shall be strictly maintained with replacement bags on hand at all times. (Rule 209)
- b. Coal moisture content shall be at least 6%. (Rule 209)
- c. Process weight for facility shall not exceed 1.5 MM TPY without prior District approval. (Rule 209)
- d. Coal storage operation shall operate no more than 8 hours per day without prior District approval. (Rule 209)
- e. No emission shall create nuisance. (Rule 419)
- f. All air displaced from silo shall vent only to fabric collectors. (Rule 209)
- g. All collected dust shall be pneumatically conveyed to surge bin at truck loadout tower and loaded out with coal. (Rule 209)
- h. If visible emissions exceed 0% opacity from any emission point additional dust control provisions will be required. (Rule 210.1)

The ATC allows a maximum of 15.5 pounds of coal dust to be released from the entire facility on a daily basis. A particular day can be 10% higher than this limit but each monthly total must remain under this daily limit on average. In the environmental analysis performed by the RADIAN Corporation for the City of Wasco it is stated that the calculated emissions for the facility are based on the handling of 900,000 tons of coal.

Annual emission estimates were calculated based on the annual quantity of coal handled at the terminal. Annual material put through the facility under the proposed CUP application would be limited to 900,000 tons. Annual fugitive dust emissions are also listed in Table 4.2-3.

The RADIAN document also claims that receiving and storage of coal is permitted at 15 hours per day in contrast to the 8 hours per day in the ATC.

Peak hour and peak day emissions for each emission point are listed in Table 4.2-3. Peak day emissions were calculated using the maximum design capacity of the equipment and the maximum hours of operation per day -- 15 hours (receiving and storage) and 20 hours (reclaiming and loadout).

In the RADIAN document the following table specifies the particulate emission rates for the facility based on 900,000 tons handled for six days per week and at 15 to 20 hours per day for various operations.

TABLE 4.2-3. FACILITY PEAK PARTICULATE EMISSION RATES^a

No.	Emission Point	lb/hr	lb/day	lb/yr
<u>Receiving and Storage</u>				
1	Railcar Unloading	0.02	0.29	31.00
2-12	Transfer Points	0.40	6.03	645.20
13	Yard Locomotive	1.05	15.75	1685.30
	Subtotal	1.47	22.07	2361.50
<u>Reclaiming and Loadout</u>				
14	Transfer Point	0.05	0.98	274.40
15	Transfer Point	0.02	0.33	91.80
16	Truck Loading	0.08	1.60	448.00
17	On-site Road Dust ^b	1.01	0.16	51.22
	Subtotal	0.16	3.07	865.42
	FACILITY TOTAL	1.63	25.14	3226.92

^aBased on 900,000 tons per year coal throughput; receiving and storage 15 hours per day; truck operations 20 hours per day; six days per week schedule.

^bBased on 0.114 miles on site; 6 trucks per hour; 20 hours per day; 280 days per year; emission factor of 0.012 lb/vehicle-mile (EPA, 1983 (Table 11.2.5-1)).

Based on this table, there should be some significant changes to these numbers if the total tonnage should change from 900,000 tons to 1.5 million tons per year. The higher numbers may affect people living nearby the facility in ways significantly higher than any effects that were analyzed in 1987. This is information the public and the CEC commissioners need to see before any decisions are made for the HECA project.

In the original analysis the emergency unloading pad has a capacity of 8,000 tons of coal and is to be used for controlling coal fires that begin in the silos and where space for a large amount of coal is needed in an emergency situation. It was assumed that this was large enough for 900,000 tons of annual throughput. Is this unloading pad large enough for 1.5 million tons of annual handling? It was also assumed, based on information from the Savage owner, that coals fires would happen less than one time per year. How does this frequency change when the facility must operate at maximum capacity? The Wasco amendment changes the definition of the coal to be received from

Noise levels must be analyzed concerning the projected increase in coal handling. Ground vibration may also be a factor with significant increases because of the greater speed needed in unloading the rail cars. These types of analysis were done in 1987

assuming only 900,000 tons annually would be handled and the hours of operation would be shorter.

Below are comments which AIR submitted to the City of Wasco before the February 10, 2014 meeting. AIR was told that this letter was not considered because it arrived after the January 13, 2014 meeting. These comments are mostly about the danger to children from the rail siding where the coal cars will be shuttled continuously after this expansion to the Savage facility.

February 7, 2014

Dear City of Wasco and Planning Commissioners,

The Association of Irrigated Residents, a state registered non-profit of Central Valley residents advocating for cleaner air and environmental justice, makes these comments to the City of Wasco. We also incorporate into our comments any comments made by the Sierra Club on this matter.

The photo below is of school children passing around the coal cars in the area immediately south of the Amtrak Station in Wasco. The photo was taken in February of 2011. This is a very dangerous situation. Even with fences repaired and signs to keep people from trespassing, this practice of taking a short cut across the tracks continues to happen on a daily basis by young and old alike.

The huge expansion of Savage operations will make this situation even more dangerous. I don't think you have adequately addressed this situation with this amendment.

Please consider asking Savage (HECA) to put in more secure fencing along the east side of these rail sidings. Also, ask Savage to improve the rail crossing on 6th Street and on Poso. Both of these crossings need sidewalks and lights for pedestrians. Alternatively, it would be appropriate to ask Savage for significant help in building a pedestrian overpass in the area of the Amtrak Station.

HECA represents a \$4 billion investment with around \$500 million coming from taxpayers. Coal handling is a dirty business and only 90% of the potential coal dust is controlled by this amendment which is the technology of over 20 years ago. Modern technology can reduce the coal dust emissions from Savage operations by more than 90%. The money is there from HECA to put in place better technology for the control of coal dust. The switching locomotive belonging to Savage must also be replaced with the cleanest, Tier 4, locomotive on the market today. This will reduce diesel emissions from the operation significantly. There is no reason why this should not be done.

Finally, a full scale EIR should be done for this significant expansion of Savage operations. It is an environmental justice issue that this be done. Many children of low income families and from families of minority groups live nearby this facility. They need special protection from pollution if they are to grow up healthy. A environmental

analysis of the effects of the proposed Savage operations needs to be done. Simple reliance on the air district analysis of over 20 years ago is not adequate or even legal.

Sincerely,

Tom Frantz
President, Association of Irritated Residents



Here is a copy of the Brown Act Complaint filed against the Wasco Planning Commission.

Association of Irritated Residents
Tom Frantz, President
29389 Fresno Ave.
Shafter, CA 93263

February 16, 2014

Chairman Jill Drescher
Members John Pallares, Elizabeth Tapia, Katie Romero, and Pedro Ramirez
Wasco Planning Commission and Planning Department
City of Wasco
746 8th Street
Wasco, CA 93280

Dear Chairman Drescher,

This letter is to call your attention to what the Association of Irrigated Residents believe was a substantial violation of a central provision of the Ralph M. Brown Act. This violation should void an action taken by the Planning Commission acting on behalf of the public and the City of Wasco.

The following describes the nature of the violation: In its meeting of February 10, 2014, the Planning Commission took action by formal vote to approve an amendment to Conditional Use Permit 489-87 to increase the operating capacity of the Savage coal facility from 900,000 tons per year to 1,500,000 tons per year. The item was posted in the February 10, 2014 agenda as part b) under agenda item 8 which was labeled Public Hearing. A copy of the agenda posted online is below.

CITY OF WASCO
PLANNING COMMISSION AGENDA
2nd MONDAY OF EACH MONTH
February 10th 2014 – 6:00 P.M.
City Council Chambers
746 8th Street Wasco, California

8. PUBLIC HEARING

- a) Report, Public Hearing and Possible Approval Re: A Resolution of the Planning Commission of the City of Wasco Approving an Amendment to Conditional Use Permit 13-02 and the accompanying categorical exemption. The applicant is proposing to sell alcoholic beverages for off-site consumption under an Alcoholic Beverage Control (ABC) Type 21 license.
- b) Continued Hearing and Possible Approval Re: A Resolution of the Planning Commission of the City of Wasco Approving an Amendment to Conditional Use Permit 489-87 to increase operating capacity from 900,000 tons of sub-bituminous coal per year to 1,500,000 tons of non-metallic minerals per year.

The action of approval was not in compliance with the Brown Act because the public was not allowed to address the Planning Commission either before or during the Planning Commission's consideration of the item.

The agenda item in question was called a "continued hearing". The item was originally considered at the Planning Commission meeting of January 13, 2014. Public comment was taken at that meeting and then closed. Several commissioners then asked for more time and more information so the item was continued until the next meeting.

On February 10, 2014, several members of the public arrived at the 6 pm meeting and were told they would not be allowed to make comments on this agenda item. Chairman Drescher, with advice from City Counsel, stated that the public comment period had been closed at the previous meeting and would not be reopened.

But, Government Code Section 54954.3 of the Brown Act specifies that every agenda must provide a provision for public comment on every agenda item before any action is taken by the legislative body. The only exception is when a committee of the legislative body has already considered the item at an earlier time and taken public comment. The legislative body does not have to allow further public comment in that situation.

Clearly, the meeting of the Planning Commission on January 13, 2014 was not a "committee" meeting. It was, instead, a regularly scheduled meeting of the entire Planning Commission. The exception noted in the Brown Act does not apply. Therefore, the Brown Act mandates that public comment should have been taken on the agenda item which is the subject of this complaint.

The facts above clearly explain the Brown Act violation committed by the Planning Commission on February 10, 2014.

What follows are a few more details showing how the public was unjustly denied participation in this public hearing by the Planning Commission: The agenda was

publicly posted so that at least four people came to the meeting to speak on the agenda item in question. Nothing in the agenda said there would be a denial of public comment for this particular agenda item. Yet, when these people tried to submit comment cards for this agenda item before the meeting began they were told no comments would be accepted.

During the public hearing on this agenda item one commissioner asked that public comment be taken but Chairman Drescher denied the request after the City attorney incorrectly said she, as chairman, had the option to take public comment or to refuse it.

During the public hearing, Mr. Mobley presented to the Commissioners more detailed information and some new information about the amendment and the proposed operation of the project if the amendment was approved. There was information presented which had not been given to the commissioners at the earlier meeting in January. He spoke about the quantities of coal dust which would be emitted annually and how coal spillage along the railroad tracks would be cleaned. Members of the public had come prepared to give comments on these same issues. Several members of the public had also come prepared to speak about environmental justice issues in regards to how this amendment would affect the hundreds of residents of the farm labor camp adjacent to the Savage facility.

Also, when Ana Martinez, a resident of nearby Shafter and a representative of Greenaction for Health & Environmental Justice, addressed the Commissioners during general public comments, she was rudely interrupted several times by the City attorney who tried to get her to stop talking. She was attempting to tell the Commissioners that their process of dealing with this amendment had failed to adequately inform and consider the hundreds of residents of the Farm Labor Camp immediately adjacent to the project. This is a direct violation of the Brown Act, Section 54954.3 (c) which says the legislative body shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

At least two written comments concerning this agenda item were also sent by members of the public to the Planning Commission between the January 13, 2014 meeting and the February 10, 2014 meeting. These comments were accepted by the Planning Director, Roger Mobley, and he never indicated, both in person, nor by email, that they would not be considered or be available to the Planning Commission during the public hearing on February 10. Below is a copy of an email from Mr. Mobley to myself on February 6, 2014 where he gives advice on how to submit further comments by email.



TJ Frantz <tom.frantz49@gmail.com>

wasco cup

Roger Mobley <romobley@ci.wasco.ca.us>

Thu, Feb 6, 2014 at 9:51 AM

To: "Tom (tom.frantz49@gmail.com)" <tom.frantz49@gmail.com>

Tom, I just got off the phone with Chris Romanini who also sent me a letter and both hers and yours went into my junk file again. In there I can't see your attachment. She ended up sending it to herself and then forwarding it to me and it came through. Long story short I have not received what you are trying to send me and I have your e-mail address in my computer. I don't understand why. Also try sending it to my senior planner at kecobb@ci.wasco.ca.us

Roger Mobley

Planning Director

In other words, in this email, dated February 6, 2014, Wasco's Planning Director apparently did not believe public comments were closed. But, at the meeting on February 10, 2014, Mr. Mobley stated that public comments were closed and any comment letters received since the meeting of January 13, 2014 were not available to the Commissioners. The public were clearly misled by the Planning Director into believing their written comments submitted before the February 10, 2014 meeting were part of the public record for the proceeding. Since they were apparently not included or considered, this constitutes a further violation of the Brown Act.

The Brown Act creates specific obligations for public participation during public meetings of legislative bodies such as the Planning Commission. The Brown Act also creates a legal remedy for illegally taken actions as described above which is namely, the judicial invalidation of these actions upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), we demand that the Planning Commission cure and correct the illegally taken action as follows: There must be a formal and explicit withdrawal of the approval of the amendment to CUP 489-87 taken during the February 13, 2014 Planning Commission meeting with the reasons stated for the withdrawal. There must then be a posting of this item to a future agenda of the Wasco Planning Commission and all written public comments received to date and received before the new public hearing on this item must be made part of the public record for that item. Finally, public comment must be received when this item is heard again by the Planning Commission.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure and correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we would also ask the court to order you to pay our court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Since an appeal of the decision by the Planning Commission regarding the Amendment to CUP 489-87 has been made to the Wasco City Council it is consistent with this complaint that no decision by the City Council be made until all actions related to this complaint are complete including any necessary judicial action.

Sincerely,

Tom Frantz
President, Association of Irrigated Residents