

DOCKETED

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Kern County Comments for June 22, 2015 Committee Conference

Additional submitted attachment is included below.

Lorelei H. Oviatt, AICP, Director
2700 "M" Street, Suite 100
Bakersfield, CA 93301-2323
Phone: (661) 862-8600
Fax: (661) 862-8601 TTY Relay 1-800-735-2929
Email: planning@co.kern.ca.us
Web Address: <http://pcd.kernds.com/>



**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

Planning
Community Development
Administrative Operations

June 18, 2015

File: Hydrogen Energy, California (HECA)
Zone Map No. 120

California Energy Commission
Attn: Hearing Committee Members
1516 9th Street, MS-15
Sacramento, CA 95814-5512

**RE: Hydrogen Energy California – Amended Application for Certification (08-AFC-8A)
Comments for June 22, 2015 Committee Conference
Portion of Applicant presentation – Not allowed by Zoning**

California Energy Commission Representatives:

Kern County is in receipt of the notice from the California Energy Commission regarding the June 22, 2015, Committee Conference to discuss the request to terminate the amended application submitted to the California Energy Commission (CEC) on May 2, 2012, for the Hydrogen Energy California (HECA) Project.

Docketed TN# 204940 provides an official Transcript of the 5/16/2015 Committee Status Conference that was a hearing on the Intervener's motion to terminate the application for certification of the amended Hydrogen Energy Application. Hydrogen Energy Representative Jim Croyle testified that a product that benefits transportation (diesel exhaust fluid) would be possible to be made from urea produced from this Hydrogen Energy Plant (Page 36 lines 19-25 and Page 37 lines 1-7). This is not accurate. As noted clearly in our July 7, 2012, comment letter and in public testimony, the plant is only authorized with the current A (Exclusive Agriculture) zoning to produce fertilizer for agricultural use.

July 2012 Kern County Letter

- d. Any use of the urea or other chemicals for purposes other than the production of fertilizer for agricultural uses would constitute a chemical production plant. While the HECA chemical production plant would also happen to produce power, this chemical production component would trigger the need for an industrial general plan designation and industrial zoning (M-2 with a CUP or M-3). Chemical production is not permitted at all in agriculturally designated areas. Therefore, if the application remains as written, the County will require that the project proponent process applications for a General Plan Amendment and a Zone Change to an industrial designation.

The letter further notes our concern that the original May 2012, application package includes several references to the production of items that are beyond the scope of the production of fertilizer for agricultural uses. Specifically, language is included throughout the revised application which states that the "Manufacturing Complex" portion of the project will produce products (including urea, urea ammonium nitrate [UAN], and anhydrous ammonia) that will be used for transportation and industrial applications.

We brought this to the attention, on numerous conversations, of both Mr. Croyle and his representatives, including legal representatives who assured us that they were clear on the restrictions to only urea production for fertilizer and were deleting those references from the project application.

The Kern County Zoning Ordinance (Title 19) Chapter 19.06 – Administration, Section 19.06.20 Authority to Administer delegation of authority to the Kern County Planning Director for interpretations of the provisions of the ordinance. It states “When there is a question as to the meaning or the intent of any requirement of this title...the Planning Director shall provide any necessary interpretations and the decision of the Planning Director shall be final.”

The testimony of Mr. Croyle that the use of the “high purity urea” to be produced at the Kern County Hydrogen Energy plant location and used to produce “diesel exhaust fluid” is fertilizer, is not an interpretation Kern County accepts. In fact, it is the determination of this department, that such use of the produced urea constitutes a product of a chemical production plant which requires M-2 PD (Service Industrial – Precise Development Combining District) with a Conditional Use Permit or M-3 PD (Heavy Industrial – Precise Development Combining District) both with the appropriate General Plan designation. As well, policies of the Kern County General Plan require a specific plan for projects over 40 acres. Based on this change in procedures, implementation of this project would require approval of a Specific Plan Amendment, Zone Change, and a Precise Development Site Plan. Further the findings of the Williams Act Cancellation were based on the fertilizer and power plant being consistent with the Agricultural zoning not anticipating the potential use as industrial zoning.

In summary, the representation of the applicant at the June 16, 2015, Committee Status Conference presented inaccurate information and further added new information that was contrary to all meetings and representations to both the County Staff and Board of Supervisors on the nature of the project. Please take this information into account when considering the request to terminate the application and in further processing, to ensure a public process that has integrity and respect for local government authority.

Kern County appreciates our long relationship with the California Energy Commission and the public transparency of the process.

Should you have any questions, please contact me at (661) 862-8866 or via email at LoreleiO@co.kern.ca.us.

Sincerely,



Lorelei H. Oviatt, AICP, Director
Kern County Planning & Community Development Department

cc: County Counsel
Clerk of the Board
Hydrogen Energy, Inc.
California Energy Commission – John Heiser