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DATE: May 29, 2015

TO: Interested Parties

FROM: Dale Rundquist, Compliance Project Manager

**SUBJECT: Argus Cogeneration Expansion Project (86-AFC-1C)
Staff Response to Searles Valley Minerals Comments**

On April 29, 2015, Searles Valley Minerals Inc. (SVM) submitted comments on the Energy Commission staff's assessment of the ACE Project Decommissioning Plan dated November 25, 2014. Energy Commission Staff Responses to the SVM comments is provided below. Energy Commission staff's responses to these comments demonstrate that the Staff Analysis has addressed the potential for significant environmental impacts and has recommended appropriate conditions to ensure that the demolition activities will be conducted in compliance with applicable Laws, Ordinances, Regulations and Standards (LORS). There are legal issues between SVM and ACC that are not addressed in the Staff Analysis nor should they be. Staff will recommend that the Energy Commission approve the Decommissioning of the Argus Cogeneration Expansion Project when it is considered by the Energy Commission at the June 10, 2015 Business Meeting.

This response has been mailed to the Commission's list of interested parties and property owners adjacent to the facility site. It has also been e-mailed to the facility listserv. The listserv is an automated Energy Commission e-mail system by which information about this facility is e-mailed to parties who have subscribed. To subscribe, go to the Commission's webpage for this facility, cited above, scroll down the right side of the project webpage to the box labeled "Subscribe," and provide the requested contact information.

If you have questions about this response to comments, please contact Dale Rundquist, Compliance Project Manager, at (916) 651-2072, or by fax to (916) 654-3882, or via e-mail to dale.rundquist@energy.ca.gov.

Mail List 753
Argus Cogeneration Expansion Listserv

**ARGUS COGENERATION EXPANSION PROJECT
(86-AFC-1C)
PETITION TO DECOMMISSION
Staff Response to Comments
Dale Rundquist**

INTRODUCTION

On November 25, 2014, the ACE Cogeneration Company, LP (ACC), the owner of the Argus Cogeneration Expansion (ACE) Project, filed a petition with the California Energy Commission (Energy Commission) requesting to decommission the ACE project. ACE is a 100-megawatt (MW) coal-fired circulating fluidized bed (CFB) cogeneration project, located on the northwest side of Searles Lake in Trona, San Bernardino County, California. The project was certified by the Energy Commission on January 8, 1988, and began commercial operation in January, 1991. The plant consists of a single, coal-fired CFB boiler and a single steam turbine generator (STG).

The Decommissioning Plan (Plan) proposed in the petition would result in the power plant and other facilities being demolished and removed and the license being terminated. California Energy Commission staff reviewed the petition and assessed the impacts of this proposal on environmental quality and on public health and safety. Staff published its assessment on April 8, 2015 for a 30-day public comment period.

http://docketpublic.energy.ca.gov/PublicDocuments/86-AFC-01C/TN204090_20150408T135700_ACE_Decommissioning_Staff_Analyses.pdf

On April 29, 2015, Searles Valley Minerals (SVM) sent a letter to the Energy Commission with several comments about items they thought needed more investigation. http://docketpublic.energy.ca.gov/PublicDocuments/86-AFC-01C/TN204493_20150504T161621_Searles_Valley_Minerals_Comments_on_ACE_Project_Decommissioning.pdf ACC responded to those comments in a letter dated May 8, 2015. http://docketpublic.energy.ca.gov/PublicDocuments/86-AFC-01C/TN204569_20150511T083044_Responses_to_Comments_from_Searles_Valley_Minerals.pdf

A summary of the ACC and Energy Commission Staff Responses to the SVM comments is provided below. Energy Commission staff's responses to these comments demonstrate that the Staff Analysis has addressed the potential for significant environmental impacts and has recommended appropriate conditions to ensure that the demolition activities will be conducted in compliance with applicable Laws, Ordinances, Regulations and Standards (LORS). There are legal issues between SVM and ACC that are not addressed in the Staff Analysis nor should they be. Staff will recommend that the Energy Commission approve the Decommissioning of the Argus Cogeneration Expansion Project when it is considered by the Energy Commission at the June 10, 2015 Business Meeting.

ACC AND ENERGY COMMISSION RESPONSES TO SVM COMMENTS

1. “New Owner”

SVM Comment: Throughout the Plan, the term "new owner" is used. SVM understands the term to mean a new owner, approved by SVM, of the buildings and improvements on the leased premises and not a new owner of the real estate that is the site. SVM is the owner and the lessor of the real estate.

ACC Response: ACC acknowledges that SVM is owner and lessor of the property where the ACE power plant is currently located. ACC is the owner of the ash landfill.

Staff Response: Staff acknowledges that SVM is owner and lessor of the property where the ACE power plant is currently located. ACC is the owner of the ash landfill. The term “new owner”, refers to Sabco, Inc (Sabco).

2. Assignment from ACC to Sabco, Inc.

SVM Comment: The Plan discusses an agreement reached on November 24, 2014 between ACC and Sabco to assign the Lease to Sabco as part of the Plan. The Lease provides that ACC, may with the prior written consent of SVM (which consent shall not be unreasonably withheld) assign or otherwise transfer all or part of ACC's interest in the Lease pursuant to a Permissible Transfer as set forth in that certain Limited Partnership Agreement between ACC and KMCC dated as of February 15, 1988.

ACC Comment: No comment.

Staff Response: Energy Commission staff will be monitoring the closure and decommissioning of the ACE facility, ensuring that the specific actions being taken by the project owner cause no significant adverse environmental impacts, and that such actions comply with all laws, ordinances, regulations, and standards (LORS). The issues presented by SVM regarding certain contract disputes with the project owner do not fall under the licensing jurisdiction of the Energy Commission and are unrelated to staffs’ analysis.

3. Other Uses of the ACC Plant Site

SVM Comment: The Lease agreement is clear that the property was leased to ACC solely for the construction, operation and maintenance upon the leased premises of a cogeneration facility for the production of steam and electrical power. The lease agreement also provides that ACC may occupy and use the leased premises for any other lawful purpose, upon the prior written consent of SVM.

ACC Response: ACC does not know or have information regarding Sabco's intended use of the site. As above, ACC recognizes and understands the contractual issues raised by SVM regarding the ground lease and will abide with any requirements of the ground lease including transfer requirements.

Staff Response: See Staff Response under item 2 above.

4. Environmental Considerations

SVM Comment: The Plan states that prior to the construction of the ACE Project, the project site was highly disturbed. The next paragraph states that the ACE site and its surroundings have been used for industrial purposes, including mineral extraction. As far as SVM knows, there never was any mining (... mineral extraction") on the ACE site or in the areas surrounding the ACE site.

Staff stated in the March 1987 ACE Project Final Staff Assessment that the ACE site was highly disturbed prior to development of the power plant. Although the site was highly disturbed, there were no structures on the site and hence undeveloped as described in the Decommissioning Plan.

ACC Response: Although the site was highly disturbed, there were no structures on the site and hence undeveloped as described in the Decommissioning Plan. The description in the Decommissioning Plan presents the land uses on the ACE site and its surroundings. These include uses such as mineral extraction that occur in the broader region.

Staff Response: Although the site may have been highly disturbed and there were no structures on the site prior to the development of the ACE Project, Energy Commission staff will be monitoring the closure and decommissioning of the ACE facility, ensuring that the specific actions being taken by the project owner will cause no significant adverse environmental impacts, and that such actions comply with all LORS.

5. Ownership of the ACC Ash Disposal Site

SVM Comment: As part of its duties under the Plan, ACC should be required to contact the Water Board and to prepare and file prior to the approval of the Plan any and all documents that are reasonably necessary in SVM's opinion to correct Board Order No. 6-00-92 so that the Water Board is informed and the record is clear that ACC is the landowner of the 65-acre disposal site, that ACC managed the Ash Disposal Site, that all the ash disposed of on the Ash Disposal Site was generated by ACC's power plant, and that ACC is the responsible party for the discharge and any condition or threatened condition of pollution or nuisance resulting from the discharge as it affects surface or ground waters, that SVM is not a responsible party for the discharge and any condition or threatened

condition of pollution or nuisance resulting from the discharge as it affects surface or ground waters.

ACC Response: ACC concurs that SVM does not have any responsibility or obligations regarding the ACE ash landfill. The wording in the Waste Water Discharge Requirements refers to “the landowner of the property on which the ACE disposal operations occur....” That landowner is ACC.

Staff Response: Lahontan Regional Water Quality Control Board (LRWQCB) Order 6-00-92 states that IMC Chemicals, Inc. (IMCC), as landowner, is a responsible party for the discharge and any condition or threatened condition of pollution or nuisance resulting from the discharge as it affects surface or groundwater on IMCC managed land. ACC has primary responsibility for compliance actions specified in the Order as they affect surface or groundwater on IMCC managed land and IMCC has secondary responsibility. LRWQCB Order 6-00-92 was adopted by the LRWQCB at a public meeting held in Ridgecrest on November 15, 2000.

If the designation of IMCC as a responsible party is no longer accurate as described in the order, it is the responsibility of ACC and IMCC to follow appropriate procedures to update LRWQCB Order 6-00-92 with current information.

6. Thermal Host Interconnection

SVM Comment: Section 3.8 on page 3-3 of the Plan states that SVM, as the thermal host for the ACC plant, took up to 300,000 pounds per hour of steam. That is not correct. SVM took up to 600,000 to 650,000 pounds per hour of steam.

ACC Response: ACC concurs with SVM that up to 600,000 to 650,000 pounds per hour of steam were delivered by the ACE project to SVM. The Decommissioning Plan referred to the average amount of steam delivered when ACC provided steam to SVM. Amounts historically delivered ranged from 0 to 650,000 pounds per hour but generally averaged around 300,000 pounds per hour.

Staff Response: Staff agrees that the Decommissioning Plan refers to the average amount of steam ACC provided to SVM. Staff agrees the average amount of steam would be between 0 and 600,000 pounds (about 300,000).

7. Water

SVM Comment: ACC's position on potable and brackish water is totally inconsistent. In the Plan, ACC states that potable water and brackish water is and will be available. But that is months after the date that ACC claims it

terminated the Steam Purchase and Sale Agreement (SPSA), the agreement that gives ACC the right to buy potable and brackish water from SVM. ACC is telling CEC one thing and telling SVM the opposite. ...But if ACC has terminated the SPSA, as it claims, it has terminated its right to buy potable and brackish water from SVM. So where will ACE get the water it states it needs for decommissioning?

... ACC has not paid SVM for water it has taken during 3 time periods, one in late 2014 and two in 2015. ACC was invoiced for that water consumed and has also been notified by a subsequent invoice of its failure to pay over \$800.00 past due.

... the Plan states that SVM obtains brackish water to supply to ACC from its mineral extraction process. That is not correct. According to the SPSA, the brackish water supply from SVM comes from the South Brackish and the Valley Wells brackish water systems.

ACC Response: ACE has continued to receive and pay for potable and brackish water from SVM. ACE acknowledges three payments totaling less than eight hundred dollars were inadvertently missed because of a change in personnel. These missed payments were paid on or before May 8, 2015. If SVM is unwilling to provide water after October 1, 2015, ACE will obtain any required water from other municipal water and/or brackish water suppliers in the area.

SVM notes that the source of the brackish water supply is from the South Brackish and Valley Wells brackish water systems. As the brackish water supplier, they are knowledgeable of the source and ACC appreciates the correction.

Staff Response: The water supply and conveyance issues between ACC and SVM are contractual. There is no environmental or law, ordinance, regulation or standard (LORS) compliance issue presented.

See also Staff Response under item 2 above.

ACC states, in their May 8, 2015 letter, that water use by October 1, 2015 would be extremely low because all demolition work would be complete by that time. If ACC cannot continue to obtain water from SVM after October 1, 2015, ACC would have to submit an amendment identifying a new water supplier and water delivery method.

8. **Waste Water**

SVM Comment: The Waste Water section of the Plan states that waste water generated will include dust suppression drainage and equipment wash water.

Section 4 (d) of the SPSA provides that SVM shall provide, without charge, to ACC disposal of waste water generated by ACC's Facility not to exceed 100,000 ppm total dissolved solids.

As discussed in paragraph 7, Water, above, by a letter dated August 29, 2014, ACC gave written notice to SVM that it was terminating the SPSA effective October 1, 2015. While SVM disputes the validity of that termination notice, if ACC has terminated the SPSA, as it claims, it has terminated its right to have SVM provide disposal of ACC's waste water. In any event, neither ACC nor any permitted assignee will be supplied waste water disposal services by SVM after October 31, 2015. So how will ACC or any permitted assignee dispose of its waste water?

ACC Response: Waste water produced during decommissioning will be minimal since there will not be any process water produced. It will primarily consist of equipment wash water and human waste water. If SVM does not provide waste water disposal after October 1, 2015 or during decommissioning, ACC will use portable toilets and collect and truck any equipment waste water off site to be disposed of in an approved disposal location. Waste water generation during October 2015 should be minimal since a minimum number of workers will be on-site to complete clean-up activities.

Staff Response: ACC states in their May 8, 2015 letter that minimal waste water would be produced during decommissioning. If SVM does not provide waste water disposal to ACC, ACC would have to submit an amendment for the use of offsite disposal of all equipment waste water to an appropriate disposal facility.

9. Fire Water

SVM Comment... the Plan states that the existing on-site fire protection systems will be relied upon for as long as buildings remain occupied (and) that SVM shall provide, without charge, to ACC fire water at a capacity of 1,000 GPM.

... In any event, neither ACC nor any permitted assignee will be supplied fire water by SVM after October 31, 2015. So how will ACC or any permitted assignee operate the existing on-site fire protection system?

ACC Response: Water for fire protection is stored on-site in two 300,000-gallon tanks. The tanks are kept full at all times. If SVM discontinues supplying water to the site after October 31, 2015, ACC will obtain any water needed to replenish the water tank from municipal water suppliers in the area. The need for fire water on or after this date is expected to be very unlikely since the power plant is no longer in operation and will have been demolished and removed, the transmission line will have been de-energized, and no significant flammable materials will remain on site.

Staff Response: There is an existing filled fire-water tank on the site of required fire-water capacity. In addition, ACC could procure additional water from off site as necessary. In the event that any water from the tank was used, additional water for refilling the tank could be procured from off site and delivered to the site by tanker truck.

10. Underground Foundations, Structures, Pipelines, Etc.

SVM Comment: ... the Plan states in the fourth box of Bulk Materials that ACC will remove the tops of foundations not being retained by new owner, ... underground portions of steam and water pipelines that are not required for SVM operations will be abandoned in place, ... water pipelines will be left in place for use by the new owner, ... that once the above ground portions of the ACC plant are demolished and removed the site will be cleaned up for future use by the new owner, and ... the Plan states that underground facilities such as foundations, and a natural gas pipeline after being drained will be left in place.

Since ACC constructed the buildings and the underground pipelines, ACC should be required as part of decommissioning to remove underground foundations of all buildings or other underground portions of the ACC plant to be demolished and that it further be required to remove all underground steam and water pipelines that are not going to be used by SVM.

The Staff Analysis dated April 2015 ... states that the proposed project would generate 6,000 tons of solid waste. This number will need to be updated if underground foundations, etc. are to be removed as part of the Plan. Also, the number of trucks per day arriving and leaving the site will need to be increased or the period for demolition extended.

ACC Response: ACC acknowledges SVM's instructions in reference to the terms of the ground lease to restore the site to its raw land condition at the end of the lease period on December 31, 2045 as set forth in SVM's letter dated November 4, 2014. Again, ACC will continue to abide by the lease terms. The location of underground foundations and pipelines can easily be determined from project drawings and plans as well as through commonly known and used methods. That is a condition of the lease that does not require independent Commission enforcement nor is such redundant enforcement appropriate following decommissioning of the power plant.

Staff Response: Condition of Certification **WASTE-11** will require ACC to prepare a Construction Waste Management Plan and submit the plan to San Bernardino County Department of Public Works, Solid Waste Management Division. ACC must comply with Title 24, CCR, Part 11, which requires diversion of waste from local landfills. This would ensure no impact on existing facilities.

See also Staff Response under item 2 above.

SVM Comment: SVM has requested that ACC demolish the project and restore the premises to its natural raw land condition. This would include removing all underground foundations of buildings or other underground portions of the ACC plant to be demolished, including all underground steam pipelines, water pipelines, gas lines, etc.

ACC Response: ACC acknowledges SVM's instructions in reference to the terms of the ground lease to restore the site to its raw land condition at the end of the lease period on December 31, 2045 as set forth in SVM's letter dated November 4, 2014. Again, ACC will continue to abide by the lease terms.

Staff Response: Cultural Resources staff has reviewed the SVM comment letter. While SVM does not call out any specific Cultural Resources concerns in their letter, SVM does mention the potential for below-grade removal of structures. Cultural Resources staff responds by noting that the modifications to **CUL-2** and **CUL-3** as proposed by staff for the decommissioning take into consideration the potential for ground-disturbing activities to occur and addresses that potential by requiring Cultural Resource monitoring in that event.

Demolition activities will be confined to the ACE site and since there will not be any excavation during demolition and minimal movement of soil, demolition will not have any effect on and geological, mineralogical or paleontological resources.

Staff Response: This would require additional demolition/construction work beyond what was analyzed in the decommissioning plan and would increase overall demolition/construction emission estimates. Staff believes the emission increases would be minor and with the proposed conditions of certification the project would not result in significant air quality impacts. However, as described in the Executive Summary of the staff assessment, Energy Commission staff is evaluating the ACE Project Decommissioning Plan submitted by the project owner. The issues presented by SVM regarding certain contract disputes with the project owner do not fall under the licensing jurisdiction of the Energy Commission and are unrelated to staff's analysis.

11. Hazardous Materials

SVM Comment: ... according to the Plan, hazardous materials, namely, sodium hydroxide, 50% solution and sulfuric acid that are presently in above ground storage tanks "would be retained onsite and part of the demineralized water treatment system for future use by the new owners." ...Sabco, the alleged "new owner" is described as "a California corporation operating as a general contractor." A demineralized water treatment system would only serve a power plant. ... ACC should be required to remove all hazardous materials from the

site, including hazardous materials in the above ground storage tanks used for a demineralized water treatment system and any other hazardous materials.

ACC Response: ACC does not know Sabco's intended use of the site. ACC has committed to remove all hazardous and non-hazardous material from the site except those requested Sabco to be left. This request is primarily chemicals associated with the water treatment facility.

Staff Response: In their analysis, staff proposed Condition of Certification **HAZ-3**. This condition would require that the existing project owner comply with all of the San Bernardino County Fire Department's (SBCFD) close-out requirements for any of the existing hazardous materials that are planned to remain on-site. The new owner would be required by county regulation to report any hazardous materials that would remain on-site to the SBCFD by filing a new Hazardous Materials Business Plan.

12. Dust Control

SVM Comment: ...the Plan state(s) that ACC will use appropriate dust suppression mitigation to limit fugitive particulate matter emissions, ...that ACC's contractor shall submit the Dust Control Plan to the MDAQMD at least 30 days prior to commencement of demolition, ...that wastewater generated will include dust suppression drainage and equipment wash water, ... that the existing on-site fire protection systems will be relied upon for as long as buildings remain occupied, and ... that the water pipelines will remain in place and continue to be used by the new owner of the site.

Dust suppression in the Plan will rely on the use of brackish or potable water. But as commented on in Paragraph 7, Water, above, ACC will not have any potable or brackish water supply under the SPSA since, according to ACC, it terminated the SPSA on September 30, 2014. So how will ACC suppress the dust that will be generated during decommissioning?

Table 5.2-1 on page 5-4 of the Plan refers to Rule 403 and Rule 403.1 - Fugitive Dust. The dust control plan required by the MDAQMD Rule 403.1 should be available for review as part of the Plan.

ACC Response: As proposed in the Decommissioning Plan...and required in the CEC Staff Analysis..., ACC or its demolition contractor will submit a dust control plan to the MDAQMD at least 30 days prior to the commencement of demolition activities.

Staff Response: ACC states, in their May 8, 2015 letter, that water use by October 1, 2015 would be extremely low because all demolition work would be complete by that time. If ACC cannot continue to obtain water from SVM after

October 1, 2015, ACC would have to submit an amendment identifying a new water supplier and water delivery method.

Staff is concerned with ensuring that fugitive dust emissions are effectively mitigated. If water is delivered using local water trucks and used on area roads and other portions of the project site, fugitive dust emissions can be mitigated to a level of less than significant.

In its response to comments from SVM, ACC stated, "If SVM is unwilling to provide water after October 1, 2015, ACE will obtain any required water from other municipal water and/or brackish water suppliers in the area. The municipal water supplier in Trona, CA is an SVM affiliate company. Water use during decommissioning will be minimal for a maximum of 30 workers a day and for dust control. Water use during October 2015 should be at an extremely low level since all of the demolition work will be completed with only final site cleanup remaining."

If water is trucked in from local water suppliers via water trucks there would be additional criteria pollutant and greenhouse gas emissions associated with the deliveries. However, even when considering the water deliveries in addition to the already estimated 400 total truck trips to and from the site during the six-month demolition and removal period, the estimated offsite vehicle trips associated with demolition (i.e., worker commute, debris removal, and water deliveries) would be substantially less than offsite trips associated with routine operations (i.e., employee and material delivery trips). Therefore, offsite criteria pollutant and greenhouse gas emissions are also expected to be lower during demolition than routine operation.

See also Staff Response under item 2 above.

SVM Comment: The Dust Control Plan required by the MDAQMD Rule 403.1 should be available for review as part of the plan.

Staff Response: **AQ-SC6** requires the project owner to submit a Decommission Dust Control Plan to the Energy Commission's Compliance Project Manager for approval 30 days prior to the commencement of demolition activities. Any non-confidential compliance documents submitted to the Energy Commission are available for public review upon request.

13. Emissions during ACC's Prior Operations Comment:

SVM Comment: Table 5.2-2...of the Plan uses emissions during operations in 2013 as the base year. SVM suggests that ACC did not operate for the full year in 2013 and believes that emissions data from the last full year of ACC operation should be used as the basis for comparison.

ACC Response: ACC agrees that ACE operated more in 2012 than 2013. Emissions from 2013 were used as the base year for comparing the operating and decommissioning emissions because it was the last full calendar year of operation and also represented a lower emission baseline. Even with these lower emissions in 2013, emissions will be significantly lower than operating emissions and are also expected to be lower than construction emissions.

Staff Response: The purpose of Table 5.2-2 was to compare expected emissions associated with the proposed demolition of the ACE project with past actual emissions to show that there would be lower emissions during demolition than routine operation. Using a partial year of operating data provides for a more conservative analysis than using a full year, which would have higher operating emissions. Staff has reviewed the emissions data and agrees that both onsite and offsite criteria pollutant and greenhouse gas emissions would be lower during facility decommissioning and demolition than routine operations over a six month period (demolition is expected to last 6 months). In our analysis, staff points out decommissioning emissions would mostly occur at or near ground level while operating emissions were released from a tall stack and these pollutants rose further into the atmosphere due to their buoyancy and vertical velocity and these impacts generally occurred after the plume had traveled downwind. The highest construction/demolition impacts are expected to be generally located near the project's fence line and would generally decrease rapidly with distance.

SVM Comment: There are no calculations for material handling of demolished materials (such as loading material into trucks), emissions from portable equipment, or cutting of materials with saws or torches. If ACC is going to be required to remove the foundations of structures it has demolished, then the fugitive emissions from demolition will increase and this needs to be considered. ACC should provide those calculations and the basis for them.

ACC Response: ACC and the CEC in their analyses estimated decommissioning emissions from equipment and vehicles to be used during decommissioning. Emissions from activities such as cutting of materials with saws and torches are expected to be significantly less than emissions from equipment and vehicles. Even if these minor emissions were included, it would not change the conclusion that emissions during decommissioning will be significantly less than emission from operation of the ACE plant, especially if compared to prior years when operations were greater.

Staff Response: Appendix C of the ACE Decommissioning Plan provides the greenhouse gas and criteria pollutant emission estimates. The Plan provides calculations and estimates for onsite emissions generated from off-road equipment exhaust, motor vehicle exhaust, and fugitive dust, in addition to off-site emissions generated from motor vehicle exhaust and fugitive dust. The Decommissioning Plan explained that demolition, removal, and site cleanup is

expected to last approximately six months. The maximum demolition workforce is expected to be no more than 30 workers. There would be an estimated 400 total truck trips to and from the site during the six-month demolition and removal period. The equipment expected to be used for the demolition and removal activities consists of a bobcat, three excavators, track loader, man lift, and generator. The equipment is anticipated to operate 10 hours per day, five days per week. The emission estimates accounted for worker commute and debris removal. The estimates include the assumed emission factors and calculations. The remainder of the comment correctly states that if additional work is required, there would be additional emissions that would need to be evaluated, but again, as described in the Executive Summary of the staff assessment, Energy Commission staff is evaluating the ACE Project Decommissioning Plan submitted by the project owner. The issues presented by SVM regarding certain contract disputes with the project owner do not fall under the licensing jurisdiction of the Energy Commission and are unrelated to staff's analysis.

14. Noise

SVM Comment: SVM's plant is just across the fence line from the ACE Plant. ACC reports in the Plan that decommissioning will take about 6 months. That means that the noise from the decommissioning will affect SVM's employees for 6 months, especially those who work in areas near ACC's plant. How do we protect these employees from elevated noise levels, especially the very loud noise that should accompany the implosion of the power plant? ACC has not discussed that in its Plan and it needs to be addressed to protect the workers at SVM.

ACC Response: Noise levels were measured at the closest residence because it is the nearest sensitive receptor. San Bernardino County ordinance exempts demolition activities that occur during the daytime (7 am to 7 pm) from noise limits. Construction and demolition activities occur outdoors where sound levels drop off quickly. As explained in the Decommissioning Plan ..., equipment noise levels during demolition are not expected to exceed noise levels of 90 dBA at 50 feet. The resulting worst case noise levels are not expected to be significantly different than noise levels from ACE, when it was an operating power plant with a cooling tower, and/or SVM's current operations. Consequently, SVM employees will not be exposed to noise levels from equipment that exceed noise levels associated with current SVM operations or those experienced when ACE was in operation.

Noise levels associated with implosion charges will be greater than equipment noise as explained (in) the Decommissioning Plan. This noise will be of short duration (less than eight seconds). SVM and nearby residents will be notified of the timing of the implosion event.

As the CEC staff concluded in the Staff Analysis, demolition of ACE is not expected to result in a substantial temporary increase in ambient noise levels.

Staff Response: The resulting worst case hourly noise levels are not expected to be significantly different than noise levels from ACE, when it was an operating power plant with a cooling tower, and SVM's current operations. Therefore, SVM employees would not be exposed to noise levels from equipment demolition and removal that significantly exceed noise levels associated with current SVM operations or those experienced when ACE was in operation.

Implosion charges would be short in duration (no more than 8 seconds) and would allow the project owner to safely sort and remove the structure materials from the site. SVM and nearby residents would be notified of the timing of the implosion event. Staff's proposed **WORKER SAFETY-1** requires a Construction/Demolition Explosives Safety Plan which would include procedures to be implemented to protect both on-site workers and prevent off-site impacts before proceeding. The requirement to notify SVM of the implosion would be included in this safety plan.

15. Decommissioning Alternatives

SVM Comment: The third paragraph of Section 6.0 states that ACC considered the alternative of restoring the site to its natural state which would add the extra step of covering the site with top soil and planting native vegetation. But ACC reports that it did not propose to do so because the portion of the ACC site where the power plant is located is leased from SVM and the lease is being transferred to a new owner (in reality, a new lessee with the prior approval of SVM, which has not been given).

As stated above, SVM has notified ACC that it wants the site restored to its raw land condition when the lease term ends. SVM sees no reason for ACC not to be obligated, under the Plan, to demolish all structures and improvements to the land and to restore the entire leased property to its raw land condition. As the owner of the site, SVM prefers that the site be cleared and restored to its raw land condition.

SVM hereby requests that the Plan be amended to require that ACC demolish all structures and improvements to the land and to restore the entire leased property to its raw land condition.

ACC Response: ACC acknowledges SVM's request and the ground lease requirement that the site is to be restored to its raw land condition when the lease term ends in 2045. As noted above, that is a condition of the lease that does not require independent Commission enforcement nor is such redundant enforcement appropriate following decommissioning of the power plant.

Staff Response: See Staff Response under item 2 above.

16. Board Order No. 6-00-92

SVM Comment: Board Order No. 6-00-92 of the Water Board for the Waste Water Discharge Requirements for ACC ash disposal site requires ACC to submit a post-closure maintenance plan at least 180 days prior to beginning any partial or final closure activities or at least 120 days prior to discontinuing the use of this site for waste treatment, storage or disposal.

As part of the Plan, ACC should be required to submit this document to CEC and have it available for review by the public.

ACC Response: ACC acknowledges the Waste Water Discharge Requirement for submitting a closure/post closure plan for the ash disposal site. ACE has an existing closure plan that was approved by the LRWQCB. ACC has asked that the LRWQCB accept the existing plan and has been informed orally that is acceptable.

Staff Response: In the ACE Decommissioning Staff Analysis, staff discusses that ACC would be required to comply with the requirements of LRWQCB Order 6-00-92.

17. Nuisance

SVM Comment: Table 5.2-1 on page 5-4 of the Plan refers to Rule 402 - Nuisance of the MDAQMD. The Description column does not provide a complete description of the requirements. Injury, detriment, nuisance, annoyance, which endanger the comfort, repose, health or safety or cause injury or damage to business or property are the issues. The requirements for the rule are more extensive than stated in the Plan and have more potential to be an issue with SVM during demolition.

ACC should be required to address these issues in more detail.

ACC Response: MDAQMD Rule 402 requires that:

“A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.”

Emissions of air contaminants, Public Health, and Worker Safety have all been analyzed in the Staff Analysis, and the decommissioning activities have been shown to cause insignificant impacts. The Staff Analysis contains a condition that

a Dust Control Plan must be filed and implemented, which would prevent fugitive dust from causing a nuisance. Rule 402 is generally enforced by the MDAQMD if "any considerable number of persons" file complaints, in which case the District will investigate the concerns and enforce the rule as appropriate. No further action or requirement is needed unless decommissioning activities at ACE result in a considerable number of complaints that the District determines are legitimate and require further abatement.

Staff Response: Rule 402 - Nuisance of the MDAQMD states; *"A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property. The provisions of this rule shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals."*

This rule is consistent with California Health & Safety Code (H&SC) §41700 (Nuisance Regulation) and is already included in the facility's Federal Operating Permit as permit condition number 21, under Part A: Requirements Applicable to Entire Facility and Equipment. This condition would continue to be applicable during demolition of the facility.

Staff believes that compliance with ARB's equipment programs (i.e., off-road, on-road, and portable) and compliance with staff proposed **AQ-SC6** (Decommissioning Dust Control Plan) would reduce vehicle and equipment exhaust and fugitive dust emissions to a level that would not cause a nuisance.

18. Explosives Plan

SVM Comment: ...the Plan discusses the plan to use explosives for the implosion of the facility boiler.

SVM is concerned about damage due to a shock wave or flying debris to parts of its plant that are only across a fence from where the implosion will occur. ACC needs to disclose what steps it will take to prevent injury to SVM's employees or damage to SVM's plants due to shockwaves or flying debris from the implosion.

Since this is the only asset that ACC has and since ACC will in the near term be out of business, ACC should be required to obtain and maintain insurance of adequate coverage and sufficient amount from a financially secure insurer to cover any damages that could occur to persons or property due to the use of explosives.

ACC Response: ACC has contracted with a professional, experienced contractor to perform the demolition and implosion. The company is licensed in

the State of California, bonded, and maintains professional liability insurance. Additionally, ACC is a fully solvent company and maintains appropriate general liability insurance. As required in the CEC Staff Analysis ..., at least 30 days prior to allowing explosives on the site, ACC or its demolition contractor will obtain an explosives permit from the San Bernardino County Fire Department.

Staff Response: In their analysis, staff proposed Condition of Certification **HAZ-4**. This condition would require that the existing owner obtain an explosives-use permit from San Bernardino County before commencing with any activity utilizing explosives. Staff proposed **WORKER SAFETY-1** would require that the existing owner submit a Construction/Demolition Explosives Safety Plan which would include procedures to be implemented to protect both on-site workers and prevent off-site impacts before proceeding.

19. Boiler Refractory

SVM Comment: Boiler refractory should be checked for radioactivity prior to disposal in the ash disposal site.

ACC Response: The boiler refractory has been fully tested and determined to be non-hazardous. Ash collected from the boiler has also been tested and determined to be non-hazardous by LRWQCB. The LRWQCB has also permitted ACC to deposit refractory material in the landfill in the past. As noted in the response to comment #5, ACC is the landowner of the ash landfill.

Staff Response: The boiler refractory material was not analyzed for radioactivity. However, the LRWQCB determined that the refractory waste stream boiler material is a non-hazardous inert waste. Appendix D of the ACE Decommissioning Plan includes refractory lining test results that were below the Total Threshold Limit concentrations, in accordance with Title 22, Chapter 11, Article 3, Section 666261.24 of the California Code of Regulations. The LRWQCB waste discharge requirements (WDRs) (Order 6-00-92) allow the inclusion of the non-hazardous waste refractory materials in the ACE landfill.

20. Asbestos and Lead Paint

SVM Comment: The Plan states that no asbestos or lead paint were used during the construction of the project. What assurances are there that this is correct? Has there been an asbestos or lead paint sampling program done? An asbestos/ lead paint survey should be required and the results available for review by the public prior to demolition.

ACC Response: No asbestos or lead paint were used in the construction or operation of the ACE project. Larry Trowsdale, the original developer and plant manager for the ACE project with Kerr- McGee has stated that it was Kerr-McGee's standard practice at that time not to use lead paint or asbestos in their

facilities (personnel communication, May 7, 2015). The Executive Summary of a Phase I Environmental Site Assessment provided as Appendix E of the Decommissioning Plan indicates that no evidence of Asbestos Containing Materials (ACM) were found at the ACE plant site and this finding was confirmed through interviews with site personnel and a review of pertinent documents from plant files.

Staff Response: The ACE Project was constructed in the late 1980s. The Phase I Environmental Site Assessment concluded that based on the construction date of the ACE facility, and interviews with project staff that the potential of asbestos or lead being present at the facility was low.

- In 1973, EPA banned spray-applied surfacing asbestos-containing material for fireproofing/insulating purposes. See National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR Part 61, Subpart M.
- In 1975, EPA banned installation of asbestos pipe insulation and asbestos block insulation on facility components, such as boilers and hot water tanks, if the materials are either pre-formed (molded) and friable or wet-applied and friable after drying. See National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR Part 61, Subpart M.
- In 1978, EPA banned spray-applied surfacing materials for purposes not already banned. See National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR Part 61, Subpart M.

Staff concludes it is unlikely that lead or asbestos are present at the site because these bans were in effect prior to the ACE project being constructed

21. Demolition Permit

SVM Comment: A demolition permit from the San Bernardino County Land Use Services Department is required. It should be obtained and available for public review prior to demolition since this is part of decommissioning. This requirement is not shown in the Plan.

ACC Response: The CEC's approval of the Petition for Decommissioning of the ACE project is issued in lieu of a permit issued by the San Bernardino County Land Use Services Department.

Staff Response: ACC is correct. The Energy Commission has exclusive licensing jurisdiction over all thermal energy generating facilities greater than 50MW. Any permit issued by San Bernardino County would be ministerial in nature and non-discretionary.

22. Demolition Notice to MDAQMD

SVM Comment: A notice must be submitted to the MDAQMD for demolition per Rule 306 of the MDAQMD. This requirement is not shown in Table 5.2.1 of the Plan. The notification and forms should be submitted and be available for review

prior to the start of demolition. Per the MDAQMD Asbestos Demo/Reno General Information form, asbestos surveys are required prior to renovation and demolition.

ACC Response: As required by the MDAQMD, ACC will file a demolition notice with the MDAPCD at least ten working days prior to the start of demolition activities. If the district deems additional fees or surveys are required, ACC will comply with these requirements.

Staff Response: Given a lack of asbestos at the site, Rule 306 of the MDAQMD does not apply, however if required by the MDAQMD, Energy Commission staff will ensure a demolition notice is filed at least ten working days prior to the start of demolition activities.

23. Post Demolition Site Assessment

SVM Comment: SVM recommends that a site assessment be required after the demolition is completed to assure that no environmental issues, such as ground contamination, exist.

ACC Response: The CEC is responsible for and will perform site assessments as part of their on-going compliance monitoring program for projects under their jurisdiction.

Staff Response: As required in Condition of Certification **WASTE-11**, ACC will be required to coordinate with the San Bernardino County Department of Public Works, Solid Waste Management Division to have a post demolition site Construction and Demolition inspection assessment conducted post demolition.

24. Conditions of Certification-CEC Executive Summary

SVM Comment: **AQ-SC4** requires the project owner to ensure that all applicable portable equipment used by the demolition contractor be registered through the ARB Portable Equipment Registration Program (PERP). SVM has suggested that the owner should also ensure that all off-road diesel equipment be registered through the ARB off-road mobile source program, and that all applicable on-road diesel equipment be registered through the ARB Truck and Bus regulation and that proof of regulation be available for review.

ACC Response: ACC will require its demolition contractor to use compliant equipment for the demolition activities. The diesel trucks used will comply with CARB's "On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation" as needed based on the vehicle weight. Off-road diesel equipment will comply with CARB's "In-Use Off-Road Diesel Vehicle Regulation". This regulation applies to all diesel equipment greater than 25 hp in California, and is not specific to demolition of ACE. Since these rules are applicable throughout California and are not project

specific (similar to automobile emissions standards in California), it is not considered necessary to list them as project specific requirements.

Staff Response: Staff implemented **AQ-SC4** at the request of the facility owner. However, owners and operators of portable engines, off-road diesel engines, and on-road diesel equipment are subject to ARB's Portable Equipment Registration Program (PERP), Off-Road Mobile Source Program, and the Mobile Source Program, respectively, regardless of whether these requirements are conditioned as part of the Demolition Plan. Compliance verification by Energy Commission staff can be obtained through the Compliance Program Manager upon request, or through the Air Resources Board. Staff believes that compliance with ARB's equipment programs would reduce vehicle and equipment exhaust emissions.

25. Fire Protection and Emergency Medical Response

SVM Comment: On pages 48 and 49 of the Argus Cogeneration Expansion Project Decommissioning Staff Analysis dated April 2015, the provision of fire protection and emergency medical response is discussed. SVM provided fire protection and emergency medical response services to ACC for a monthly fee under an Emergency Response Agreement. However, ACC has not paid those fees to SVM for at least three past months, despite a past due invoice sent to ACC. Since ACC has not paid past due amounts to ensure that SVM will provide those services, ACC should not rely on SVM providing those services during decommissioning. Fire, rescue and hazmat services for emergency incidents during decommissioning may overcome ACC's capabilities.

ACC Response: ACC acknowledges in the Decommissioning Plan that SVM has provided fire protection (see page 5-66) and emergency medical response services for a monthly fee. ACC also acknowledges it has missed payments due to the turnover in personnel but has made that payment on or before May 8, 2015. ACE is also served by the San Bernardino County Fire Department Station 57 (see page 5-66 of the Decommissioning Plan). These arrangements provide adequate Fire Protection and Emergency Medical Response.

The CEC Staff Analysis concluded that the decommissioning project meets all applicable LORS related to fire protection and suppression (page 48-49). The CEC staff also required automatic external defibrillators be present on-site at the start of decommissioning activities to provide the quickest medical intervention (page 51). ACC will comply with this condition.

Staff Response: Fire protection, emergency medical services, and hazmat response services would be provided, if needed, by the San Bernardino County Fire Department in case of an emergency.

26. Commencement of Decommissioning

SVM Comment: It is stated (in) the Commission Decision and Order adopted on January 6, 1988 in the Application for Certification for the Argus Cogeneration Expansion AFC that at least 12 months prior to commencing decommissioning activities at the ACE facility, ACC shall file the decommissioning plan with the CEC Compliance Project Manager. The decommissioning plan was filed with CEC on November 25, 2014.

SVM understands that the commencement of the decommissioning activities may not start before November 25, 2015, 12 months after the date the decommissioning plan was filed with CEC. Is this correct? If not, please advise why and on what date decommissioning may start?

ACC Response: Although the Commission Decision and Order adopted in 1988 included a requirement to file the Decommissioning Plan one year prior to the start of decommissioning, it is generally understood that these timing requirements are set to allow CEC staff adequate time to review and approve of the Plan. If CEC staff are able to complete their review in less time (as they have done so), there is no other legal requirement mandating that the decommissioning must wait for the remaining months and cannot start immediately upon approval of the Petition by the Commission.

Staff Response: Energy Commission staff agrees with the ACC statement that if staff is able to complete the review in less than a year's time, there is no other legal requirement mandating that the decommissioning must wait for the remaining months and cannot start immediately upon approval of the Petition by the Energy Commission.

CONCLUSION

Energy Commission staff's responses to these comments demonstrate that the Staff Analysis has addressed the potential for significant environmental impacts and has recommended appropriate conditions to ensure that the demolition activities will be conducted in compliance with applicable Laws, Ordinances, Regulations and Standards (LORS). There are legal issues between SVM and ACC that are not addressed in the Staff Analysis nor should they be. Staff will recommend that the Energy Commission approve the Decommissioning of the Argus Cogeneration Expansion Project when it is considered by the Energy Commission at the June 10, 2015 Business Meeting.