

## TERU Focus Report: CalRecycle Jeopardizes Plasco Project

### Rescinds 2-Year-Old Determination for Salinas Valley Waste to Energy Project

May 28, 2012 -- Michael Theroux

#### Introduction

Caving to threats from a vocal minority, Carol Mortenson, recently appointed Director of California's Department of Resources Recycling and Recovery (CalRecycle) has just rescinded the agency's two-year-old determination that the Plasco Salinas Valley Project (PSVP) fits the category of "gasification" according to provisions of the Public Resources Code. This seemingly small matter jeopardizes the PSVP's pre-certification of eligibility for California's Renewables Portfolio Standard (RPS).

#### CalRecycle Overturns Itself

Mortenson's [rescission letter](#) was issued May 23, 2012 to the Canadian plasma gasification company Plasco Energy Group, who then had to inform their project partner, the Salinas Valley Solid Waste Authority (SVSWA), of the debacle. With the damage such an action would clearly cause, the CalRecycle's first error was in not scheduling a meeting between the state department, Plasco, Monterey County, and the SVSWA. In fact, not even cursory notice was given. Mortenson's reasoning for the reversal was laid on two supposed errors made by her own department in 2010: (1) "...the conclusion that the proposed Salinas Valley project would be considered a gasification facility is not supported by the statutory definition of "gasification" in Public Resources Code §40117" and (2) the admonishment that the prior determination was "... relying on language not found in the statute (e.g. the language regarding air or water discharges "in excess of standards") ..."

#### SVSWA Fights Back

The SVSWA has taken the matter directly to Governor Brown in a [formal letter](#) dated May 25, 2012 requesting that the Governor override Mortenson's decision. To support this request, appended to SVSWA's letter was key background documentation needed to properly inform the Governor of the context, starting with the CalRecycle's November 2010 [legal determination](#) and the current rescission letter. A March 9, 2011 letter signed by nine members of the California State Senate and Assembly was included as a clear show of [legislative support](#) for the 2010 determination, and lauding the efforts of the SVSWA's [Conversion Technology Commission's](#) seven years of painstaking work to find an alternative to "unsustainable landfilling." An appended [Economic Assessment](#) developed for SVSWA indicates the project's immediate and long-term benefit to the community.

The SVSWA's response rightly made reference to the "creatively crafted" wording of a [January 23, 2012 letter](#) (threat letter) sent to the new Director of CalRecycle and included it in its override request to the Governor. The "threat letter" was developed by six organizations threatening to file an administrative action petition against CalRecycle over the Plasco Salinas Valley Project.

#### The Threat Letter

Not surprisingly, the "threat letter" bears a remarkable similarity to attacks that resulted in the failure of California Assembly Bill (AB) 222 in 2010, a failure indeed that many of the signatories to this letter held great pride in accomplishing. AB 222 would have corrected scientifically inaccurate definitions and antiquated provisions, expediting new non-incineration technologies such as gasification, pyrolysis, and fermentation. Included among those opponents was the Sacramento-based group Californians Against Waste, whose second in command was Scott Smithline at the time of the successful attack. Smithline now finds himself the duly appointed Advisor to Director Mortenson. It is not surprising after all, that the same tactics employed and even the same wording used in dismantling the AB 222 effort would appear in both the threat letter, and again in the sparse justification given by Ms. Mortenson for rescission of her own agency's well-considered determination.

## The Crux of the Matter

The crux of that "creatively crafted" wording in the "threat letter" lies in the juxtaposition of two elements of the referenced regulation, Public Resources Code §40117. This curious piece of law differentiates acceptable conditions of performance for two very different aspects of any processing operation. The first suite of criteria addresses the technology, the process equipment. The second set pertains to the overall management of the facility, the project's proposed permit-bounded footprint within which all processing must occur.

In Teru Talk's own [legislative review](#), we thoroughly explore the source of this code section, AB 2770 Matthews, the "Solid Waste: Conversion Technology" bill. To do so, one must understand the context of the two RPS concurrent legislative actions, Senate Bill (SB) 1038 and SB 1078 that established the RPS and defined the relationships of the California Energy Commission (CEC) and the Integrated Waste Management Board (now CalRecycle). The language is precise and calculated; the encoded "performance criteria" (seven from AB 2770, an eighth added from SB 1038) were meant to define the conditions by which advanced non-combustive thermal conversion of solid waste might be utilized to generate renewable energy. We have provided the text of the contested code subsections, adding underlined emphasis on specific use of the words technology and process, as compared to usage of the terms facility and project:

PRC § 40177: "Gasification" means a technology [emphasis added] that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that, at a minimum, meets all of the following criteria:

- (a) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.
- (b) The technology produces no discharges of air contaminants or emissions
- (c) The technology produces no discharges to surface or groundwaters of the state

The sixth performance criterion relates to the facility:

- (f) The facility where the technology is used is in compliance with all applicable laws, regulations and ordinances.

SB 1078 created the RPS; the companion bill SB 1038 provided the enabling legislation necessary so the CEC could administer the RPS. The eight criteria in question appeared first in law as part of SB 1038 on September 12, 2002. AB 2770, as promulgated eight days later on September 20, 2002, left the lead purview regarding management and conversion of Solid Waste to what is now the CalRecycle.

## CalRecycle's Original Determination

CalRecycle knew the distinction and made it clear in the November 2010 legal determination: the Conversion Technology (the retort) must not leak (zero emissions), AND the Facility must not exceed state and federal emissions standards. The second part of the determination is typical language applied to any project anywhere in the state under the purview of any state or local agency.

The Project facility uses a Process technology. The opposition chose to not only negate the distinction but to take wording from one element, that pertaining to "no emissions" release for the equipment, and erroneously apply this criteria to the entire permit boundary of the facility, an extension well beyond the intent of the original promulgated criteria.

The 2010 determination provided to Plasco by the CalRecycle makes this clear: the *process* to be used in the Plasco Salinas Valley Project is appropriately found to be Gasification according to the encoded performance criteria which have been quoted verbatim in the letter. In Chief Counsel Elliot Block's 2010 determination, an admittedly jumbled sentence on the third page attempts to summarize all of the performance criteria at once, and reads in part (again, with our use of underlining for word emphasis):

"The project, as described, will use a noncombustion thermal process to convert solid waste to a clean burning fuel for the purposes of generating electricity; uses air/oxygen only to maintain ambient temperature; produces no air, water or hazardous waste in excess of standards ..."

There are two ways this statement can be interpreted: (1) the project is not in excess of standards, where those "standards" refer specifically to the facility or project; or (2) the process produces no air, water, or hazardous waste, in which case the standards pertinent to the technology are referenced, being the criteria dictating zero emissions.

In either case, "produces no ... in excess of standards" simply means this project or this process, your choice, "meets standards" or "complies with standards." This is a reasonable statement to make when reviewing a project for compliance and finding that it does, and we are at a loss to understand how it could be interpreted as an "underground regulation." The phrase is project specific, and makes no changes whatsoever to the regulations. It just says that this facility in compliance with local, state and federal standards, and this technology is in compliance with the zero emission criteria. From this, Chief Counsel Block concluded, "Based upon the above, the proposed Plasco project, as described, would be considered a gasification facility that would require a solid waste facility permit to operate."

Mr. Block's determination appropriately asserted the purview authorized under AB 2770 by finding the Plasco gasification facility in substantial compliance with the law and stating that as such, the facility would be required to obtain a Solid Waste Facilities Permit. The assertion was critical to the next RPS step, issuance of a pre-certification by the CEC that indeed this is an "eligible renewable energy generation facility" for conversion of solid waste pursuant to the encoded performance criteria, to the tenants of the agency of purview for solid waste management, and to the Guidebook relevant at the time.

### **What's Really Going On**

The real intent of the opposition is to keep thermal conversion of any form of solid waste from being eligible for renewable power generation under the RPS. The "threat letter" is the most recent in a history of zealous attacks stretching back to 2002 legislative actions that were entangled with creation of California's RPS. This sort of blatant attack on Business in the name of the Environment has been and continues to be instrumental in convincing existing industry to leave our state, and prospective new development to assiduously avoid doing business here. If left standing, Mortenson's unjustified reversal puts at risk the PSVP's pre-certification status as an "eligible renewable energy generation facility" under the RPS. More broadly, it exemplifies one more intentional misinterpretation of the science behind the law, and perpetuates a particularly convoluted error in logic forming the core of the opposition's claims.

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