

Brief for Appeal to the City of Sunnyside Hearing Examiner

Filed August 16, 2023

The Friends of Toppenish Creek (FOTC) appeal the City of Sunnyside's Mitigated Determination of Non-Significance (MDNS) for the Proposed Sunnyside Renewable Natural Gas Project (SS RNG). The File Number for the MDNS is 2023-0200. FOTC respectfully asks for a Determination of Significance (DS) and a follow up Environmental Impact Statement (EIS) completed by an Agency with Environmental Expertise.

FOTC believes that democracy flourishes when people know the truth concerning:

- Who benefits?
- Where does the money come from?
- Who defines the issues?
- Who suffers any adverse side effects?
- What is the harm?

This appeal is an effort to ensure full public disclosure regarding the Sunnyside Renewable Natural Gas (SS RNG) project and secure maximum public input and participation in decision making under the SEPA process and other relevant Washington laws.

In this appeal FOTC will show that:

1. The City of Sunnyside mis-interpreted numerous rules and regulations when officials determined that the SS RNG project "will not have a probable significant adverse impact on the environment."
2. If it goes forward, the SS RNG project will likely bring air pollution, significant risk of explosion and fires, and reduced quality of life to people in South Yakima County. Officials should rescind the Mitigated Determination of Non-Significance (MDNS), issue a Determination of Significance (DS), and ask the WA State Department of Ecology (Ecology) to prepare an Environmental Impact Statement (EIS).

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Legal Issues

1. Did the City of Sunnyside err by determining that that the SS RNG project “will not have a probable significant adverse impact on the environment and an Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c), provided the measures listed below are taken to mitigate potential adverse impacts”?
2. Did the City of Sunnyside comply with SEPA requirements for public involvement?
3. Did the City of Sunnyside comply with SEPA requirements to consider reasonable alternatives?
4. Did the City of Sunnyside have sufficient information before taking action?
5. Did the City of Sunnyside misinterpret the laws?

Referenced Laws

Rules & Regulations	Pages
RCW 36.70B.060 (Local Project Review)	30
RCW 43.21.030(2) (c) (SEPA Determinations)	22, 31, 36
RCW 43.21C.030(2)(c)(iii) (SEPA Determination Alternatives)	31
RCW 43.21C.030(2)(e) (SEPA Determination Alternatives)	31
RCW 46.25.050 (CDL Exemption)	26
RCW 70A.02 (HEAL Act)	14
RCW 70A.15.4540 (WA Clean Air Act – Ammonia)	8, 23
WAC 173-350 (Solid Waste Handling)	7, 37
WAC 197-11-030 (SEPA Policy)	29, 32
WAC 197-11-060 (SEPA Review Content)	30, 32
WAC 197-11-080 (SEPA Alternatives)	32, 35, 36
WAC 197-11-100 (SEPA Information)	35
WAC 197-11-340 (SEPA DNS)	30
WAC 197-11-350 (SEPA MDNS)	30
WAC 197-11-350(5) (SEPA Economic Benefits)	5
WAC 197-11-355 (SEPA MDNS Optional)	30, 38
WAC 197-11-360 (SEPA DS)	30
WAC 197-11-400 (SEPA EIS)	32
WAC 197-11-402 (SEPA EIS)	33
WAC 197-11-440 (SEPA EIS)	33
WAC 197-11-444 (Elements of the Environment)	23
WAC 197-11-500 (SEPA Public Notice)	29
WAC 197-11-502 (SEPA Public Notice)	29
WAC 197-11-502(2) (SEPA Consulting Agencies)	36
WAC 197-11-510 (SEPA Public Notice)	29, 37
WAC 197-11-545 (SEPA Consulting Agencies)	37
WAC 197-11-550(1) (SEPA EIS Comments)	34
WAC 197-11-700 (SEPA Definitions)	36
WAC 197-11-714 (SEPA Definitions)	31
WAC 197-11-655(3) (SEPA EIS Alternatives)	35
WAC 197-11-700(3)(a)	36
WAC 197-11-764 (SEPA Major Action)	31
WAC 197-11-794	29
WAC 197-11-786 (Alternative Definition)	32
WAC 197-11-920 (SEPA Expertise)	36
WAC 197-11-794 (SEPA – Significance Defined)	21, 28
WAC 197-11-926 (SEPA Lead Agency)	38
WAC 197-11-928 (SEPA Public & Private Projects)	31, 38
SMC 18.04 Environment	38
SMC 18.040.080 Exemptions	30
SMC 18.04.120.E.3 (Mitigation Measures Description)	24
SMC 18.04.160 (Public Notice)	29

Relevant Facts

FOTC perception of the SS RNG project

What will happen if the project moves forward?

Every five to ten minutes during working hours, a heavy duty truck will deliver a load of manure (urine and feces) to the Port of Sunnyside. We do not know whether the trucks will be covered. We do not know whether the drivers will have CDL licenses. We do not know whether SS RNG will apply for truck overweight permits. We do not know how much air pollution will come from truck exhausts. We do know that the speed limit on the Sunnyside Mabton Road is 55 mph.

This manure will be transferred to huge tanks with flexible synthetic covers. We do not know the projected temperatures inside the tanks, or how long the manure will remain in the tanks. We do not know which pathogens will be killed by digestion and which pathogens will remain. We do not know how much pressure the synthetic covers can withstand. We do not know what SS RNG will do if a cover explodes.

Inside the tank micro-organisms will convert complex organic molecules to carbon dioxide, methane, ammonia, and hydrogen sulfide. The facility will separate out the methane, and somehow dispose of the other gasses. SS RNG will sell refined methane to natural gas companies.¹ SS RNG will increase profits through tax payer subsidies under green energy programs.

The waste product from digestion is called digestate. Solid digestate will be stacked at the facility until more trucks arrive to take it back to farms. Liquid digestate will be stored in a covered lagoon until it can be trucked back to farms. We do not know the amount air emissions projected from digestate. We do not know the quality of the lagoon cover. We do not know what type of lagoon liner will be in place or how much lagoon leakage there will be. We do not know who will monitor the lagoon for leakage and how that will be done. We do not know what air monitoring will be installed. We do know that the aquifer is shallow and already contaminated.

Probably will happen

- Increased traffic accidents due to increased traffic
- Increased need for road repairs due to increased truck traffic
- Increased odors when pollutants from the SS RNG facility combine with pollutants already present
- Increased coarse and fine particulate matter, ammonia, hydrogen sulfide, volatile organic compounds, and ozone in the Sunnyside area

¹ WAC 197-11-330(5) says:

A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

- Worsening of air quality in South Yakima County
- Neighbors no longer able to entertain family and friends out of doors
- Decrease in nearby property values
- Increased need for public services such as containing methane leaks.
- Increase in sickness among people who live near the SS RNG

May happen (somewhat likely, but hard to prove)

- Increase in the number of dairy cows in South Yakima County due to profits from selling manure
- Increase in morbidity and mortality from heart and lung disease in South Yakima County
- Increase in reproductive problems and childhood illness in South Yakima County
- Methane leaks from the facility and piping infrastructure especially as equipment ages
- Other businesses unwilling to locate at the Port of Sunnyside due to odor and quality of life issues
- Public funding through green energy programs ends
- Further contamination of the shallow aquifer beneath the Port of Sunnyside

Unlikely (but significant if it happens)

There is a significant risk for explosions and fires on the facility due to the presence of flammable gasses, one of which is also classified as toxic. In a worst case scenario an explosion could engulf the entire facility, sending debris over nearby homes and businesses, spreading fire to nearby structures and even the City of Sunnyside. In a worst case scenario people could die or suffer injuries from explosion and fire.

Project Description as provided by Pacific Ag²

The proposed project is located on 50 acres of land just South of the City of Sunnyside within the Port of Sunnyside Midvale Industrial Park, and adjacent to the Sunnyside Mabton Hwy# 241. The project is being built on a site independent from any of the source dairies, that will receive both dairy manure from up to 25 local dairies, and cellulosic feedstocks (likely wheat straw or corn stover) which will be fed into a series of anaerobic digestion tanks to convert the manure and cellulosic material into renewable natural gas (RNG). All feedstocks will be delivered via truck transport. The raw biogas produced through anaerobic digestions will be "upgraded" to produce pipeline quality renewable natural gas (RNG) that will be injected into the onsite natural gas pipeline for sale into multiple gas markets. Total RNG production is expected to be between 800,000

² Notice of Environmental Review, page 5/21

http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%205%20SS%20RNG%20Notice%20of%20Environmental%20Review_SEPA-2023.0200_Complete_Notice.pdf

and 950,000 MMBTU per year. Digestate and other residues produced at the plant will be carefully managed, along with strict wastewater management, emissions management, odor control and other state-of-the art practices.

History:

December 30, 2021: Yakima County Public Services notifies SS RNG that an application for a Conditional Use Permit for construction of an anaerobic digester, File Number CUP2021-00059/SEP2021-00044, is incomplete. The proposed site is west of the City of Sunnyside.³

May 12, 2022: Notice of Construction Application Supporting Information Report Sunnyside RNG LLC Proposed Renewable Natural Gas Facility Yakima County, Washington, submitted to the Yakima Regional Clean Air Agency. The proposed site is west of the City of Sunnyside.⁴ Returned for more information.

October 17, 2022: FOTC asks WA Ecology to meet and discuss methane and RNG. No meeting.

November 4, 2022: FOTC asks the Yakima Regional Clean Air Agency to discuss plans for construction of digesters in the Lower Yakima Valley (LYV) with the public. No response.

November 16, 2022: The City of Sunnyside Division of Planning and Community Development posts an Environmental Review for the proposed sale of an approximately 37.85 acre parcel (the "Property") within the Port of Sunnyside's (the "Port") Midvale Industrial Park in the Light Industrial (M-1) zoning district. File Number SEPA#2022.0046⁵

December 1, 2022: FOTC asks the Yakima County Commissioners to convene public discussions about permitting anaerobic digesters.⁶ No response.

³ CUP2021-00059/SEP2021-00044

[http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%201%20SS%20RNG%20CUP2021-00059_SEP2021-00044_\(Under_Review\).pdf](http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%201%20SS%20RNG%20CUP2021-00059_SEP2021-00044_(Under_Review).pdf)

⁴ Construction Application

[http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%201%20SS%20RNG%20CUP2021-00059_SEP2021-00044_\(Under_Review\).pdf](http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%201%20SS%20RNG%20CUP2021-00059_SEP2021-00044_(Under_Review).pdf)

⁵ SEPA#2022.0046

http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%208%20SS%20RNG%20_SEPA#2022.0046.pdf

⁶ FOTC. Air Pollution from CAFOs in Yakima County.

<http://www.friendsoftoppenishcreek.org/cabinet/data/Air%20Pollution%20from%20CAFOs%20in%20Yakima%20County%20III.pdf>

April 24, 2023: The Yakima Regional Clean Air Agency receives a New Source Review Application for SS RNG, to be located at the Port of Sunnyside. The application is returned with a request for more information.⁷

May 17, 2023: The City of Sunnyside Division of Planning and Community Development posts a Notice of Environmental Review for the SS RNG project to be located at the Port of Sunnyside. The notice is sent to other regulatory agencies and to nearby property owners.⁸

June 22, 2023: The City of Sunnyside Division of Planning and Community Development posts a determination of Mitigated Non-Significance (MDNS) for the SS RNG project.⁹

July 6, 2023: Friends of Toppenish Creek (FOTC) submit an appeal of the City of Sunnyside's MDNS, SEPA-2022.0200.¹⁰

Informing the Public

The City of Sunnyside sent a Notice of Environmental Review for comment to Agencies with Jurisdiction and about 20 households near the proposed SS RNG on May 17, 2023. To the best of our knowledge this information was not published in any Yakima County newspapers or sent to radio or television stations. Neighbors state that they had difficulty gaining any information beyond the Notice of Environmental Review.

On June 23, 2023, FOTC sent an email to the City of Sunnyside inquiring about plans to build an anaerobic bio-digester at the Port of Sunnyside. Trevor Martin, Director for Community and Economic Development, replied that an MDNS had been issued on June 22, 2023, and he sent a copy.

On June 26, Jean Mendoza from FOTC visited the Planning Office for the City of Sunnyside and viewed the documents that were available at that time. There were few.

⁷ New Source Review Application

<http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%204%20SS%20RNG%20NSR%2024May2023%20PR.PDF>

⁸ Notice of Environmental Review

<http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%205%20SS%20RNG%20Notice%20of%20Environmental%20Review%20SEPA-2023.0200%20Complete%20Notice.pdf>

⁹ Mitigated Determination of Non-Significance

<http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%206%20SS%20RNG%20Pacific%20Ag%202023-0200%20MDNS.pdf>

¹⁰ Appeal of SEPA 2023-0200

<http://www.friendsoftoppenishcreek.org/cabinet/data/AVS%207%20SS%20RNG%20FOTC%20Request%20to%20reconsider%20MDNS.pdf>

On June 29, FOTC requested copies of documents that were referenced in the Notice of Review and the MDNS, including:

- Traffic report
- Geotechnical report and Phase 1 ESA
- Communications with the Yakima Health District
- Critical Aquifer Recharge Area maps for the site
- Plans for developing access along Alexander Road
- Notice of Intent to apply for an exemption from solid waste handling permits

On July 24, Mr. Martin replied via email¹¹ with:

- No traffic reports
- No Geotechnical report and no Phase 1 ESA
- No communications with the Yakima Health District: “No comments were submitted by Health District”
- No Critical Aquifer Recharge Area maps for the site
- No plans for developing access along Alexander Road – only a map
- No Notice of Intent to apply for an exemption from solid waste handling permits

On August 5, 2023 FOTC sends a written request for documents to the Hearing Examiner¹²

On August 9, FOTC sends a written request for documents to the City of Sunnyside¹³

As of this writing on August 16, 2023, the City of Sunnyside has not provided this information to FOTC or to people who live near the proposed SS RNG project.

Yet the Notice of Environmental Review stated,

The file containing the complete application is available for public review at the City of Sunnyside, City Hall.

And the MDNS stated:

A traffic report is on file with the City of Sunnyside and has been reviewed by WSDOT.

¹¹ See SS RNG emails at <http://www.friendsoftopenishcreek.org/cabinet/data/SS%20RNG%20Emails.pdf>

¹² FOTC Interrogatory Aug 5, 2023.
<http://www.friendsoftopenishcreek.org/cabinet/data/SS%20RNG%20Interrogatory%20Signed.pdf>

¹³ FOTC Interrogatory Aug 9, 2023
[http://www.friendsoftopenishcreek.org/cabinet/data/SS%20RNG%20Interrogatory%20Aug%209%20\(1\).pdf](http://www.friendsoftopenishcreek.org/cabinet/data/SS%20RNG%20Interrogatory%20Aug%209%20(1).pdf)

This information (including all environmental documentation and a traffic study) is available to the public upon request and can be examined at our office during regular business hours.

Solid Waste Management – This project involves a solid waste handling facility that is regulated under WAC 173-350. Please contact your local County Health Department to find out what requirements pertain to the project, and whether a solid waste permit is required. If you believe your facility meets the criteria for permit exemption from WAC 173-350, please fill out a notice of intent form and submit it to Ecology.

And the SEPA check list stated:

Page 2/13: List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

Geotechnical Report and Phase 1 ESA, prepared by GeoProfessional Innovation in Fall 2022. A Yakima County Clean Air Permit Application is being prepared for filing.

Page 4/13: These emissions quantities are being refined currently as part of the Clean Air Permit Application with Yakima County.

Primary source emissions are boilers, emergency generator, and biogas flare. Lesser sources of emissions (all of which are de minimus) include the manure slurry reception area, digestate fiber separation and storage area, and crop residue grinding and conveyance. Digestate NH₃ emissions are modeled under the daily limit, and are additionally exempt from regulation pursuant to RCW 70A.15.4540.

Page 8/13: Describe any known or possible contamination at the site from present or past uses.

None known, as documented in the Phase 1 ESA.

Page 10/13: Has any part of the site been classified as a critical area by the city or county? If so, specify.

Areas on the property have been identified as Critical Aquifer Recharge Area (CARA) - primarily moderate and small areas of high. Conversations with Yakima County Planning indicate that preparation of an appropriate stormwater drainage site plan will be required to address stormwater runoff in the CARA zone.

Page 12/13: a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

The Port of Sunnyside plans to develop additional access to the industrial park from Alexander road to the north, which will serve the project.

It is not enough to say that documents exist. Those documents must be available for review. Without studying the data, the public cannot formulate opinions on the risks and benefits of a project such as SS RNG.

Methane

Methane is a greenhouse gas that has 25 to 28 times the global warming potential of carbon dioxide over 100 years and 84 times the global warming potential of carbon dioxide over 20 years.¹⁴ Reducing methane emissions is one of the best ways to stop global warming.

Air is explosive and flammable when it contains 5% to 15% methane along with oxygen.¹⁵ Methane is colorless, odorless, and tasteless. Methane is considered non-toxic, but it kills people and animals by displacing oxygen. Swamp gas is mostly methane.

According to the U.S. Environmental Protection Agency (EPA) about 25% of all U.S. methane emissions come from enteric fermentation – farm animals burping and farting. About 8% of all U.S. methane emissions come from manure management.¹⁶ Most of the methane emissions from manure management are due to storing liquid manure in lagoons. In Washington this means manure from dairy cows. Overall enteric emissions are three times greater than emissions from manure management. But for dairy cows, enteric emissions are approximately equal to emissions from manure management because most of the methane from manure management is from dairies.

According to the EPA, each Washington milk cow produces about 151 kg of methane per year from enteric fermentation and about 156 kg per year from manure management – mostly from lagoons.¹⁷ If dairies stopped storing manure in lagoons the reduction in methane emissions would be significant – about 1.5 MMT CO₂ equivalents in Washington State.¹⁸

Most dairies in Yakima County have invested in some form of manure solids separation that reduces emissions by removing solids and siphoning off liquids. But bio-digesters require liquefied manure or slurry to operate.

¹⁴ U.S. Environmental Protection Agency. Understanding Global Warming Potentials. <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

¹⁵ Material Safety Data Sheet – Methane. <https://www.pge.com/includes/docs/pdfs/shared/environment/pge/cleanair/methane1033.pdf>

¹⁶ U.S. Environmental Protection Agency. Overview of Greenhouse Gasses. <https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane>

¹⁷ U.S. Environmental Protection Agency. Download the State Inventory and Projection Tool. <https://www.epa.gov/statelocalenergy/download-state-inventory-and-projection-tool>

¹⁸ WA Ecology. WA State Greenhouse Gas Emissions Inventory, page 21. <https://apps.ecology.wa.gov/publications/documents/2202054.pdf>

Air Quality in South Yakima County

Although the Yakima Regional Clean Air Agency (YRCAA) is charged with implementing the Clean Air Act (CAA) in Yakima County, this agency does not measure emissions from dairies and does not regulate air quality related to dairies.¹⁹ The YRCAA relies on EPA modeling for estimates of air quality, with the exception of fine particulate matter,

For example, the YRCAA does not measure the criteria air pollutant ozone, but reassures the public that the EPA doesn't believe there is a problem. FOTC is not sure whether to believe this. Ozone is created when volatile organic compounds (VOCs) mix with oxides of nitrogen (NOx) in the presence of sunlight. According to an ozone study in Benton and Franklin Counties, each large dairy in Yakima County emits over 10 tons of VOC per year.²⁰ Some VOCs are hazardous pollutants. Methane is a simple VOC.

A 2015 study by the WA State Dept. of Ecology found high levels of another criteria pollutant, PM 2.5 or fine particulate matter, in Yakima County during winter months. Over 30% of the PM 2.5 was ammonium nitrate.²¹ A 2019 study by the Friends of Toppenish Creek found ammonia levels in south Yakima County that were 63 times higher than ammonia levels in the north.²² Anaerobic digesters generate ammonia by breaking down organic nitrogen.²³

In September 2006: YRCAA issued Permit No. NSRP-02-GDSD-06 for an anaerobic manure digester to GDR Energy at George DeRuyter & Son Dairy in Outlook, WA. In March 2019 the YRCAA issued Permit No. NSRP-03-GDRP-19 approving changes to the operation. The permits only looked at emissions from boilers, not from digestion or digestate. YRCAA did not require fence-line air monitoring.²⁴ The Yakima Health District does not inspect this digester or require

¹⁹ FOTC. Dissolve the Yakima Regional Clean Air Agency. <http://www.friendsoftoppenishcreek.org/cabinet/data/EPA%20Air%20Attachment%2021%20FOTC%20Arguments%20for%20Dissolving%20the%20YRCAA.pdf>

²⁰ WA Ecology. Tri-Cities Ozone Precursor Study. 2017. <https://ecology.wa.gov/getattachment/934a2f46-b000-4f9a-837c-a286ccfa615e/20171212TriCitiesOzonePrecursorStudy.pdf>

²¹ WA Ecology. Yakima Air Winter Nitrate Study. 2015. <http://www.friendsoftoppenishcreek.org/cabinet/data/YRCAA%20Hx%20Attachment%20%20Q%20YAWNS.pdf>

²² FOTC. Study Finds Elevated Ammonia Levels at Lower Valley Site. <http://www.friendsoftoppenishcreek.org/cabinet/data/EPA%20Air%20Attachment%2019%20Ammonia%20Levels%20in%20Yakima%20County%20FOTC.pdf>

²³ Impact of Anaerobic Digestion of Liquid Dairy Manure on Ammonia Volatilization Process. 2013. https://d1wqtxts1xzle7.cloudfront.net/36037847/Kedar-libre.pdf?1419471703=&response-content-disposition=inline%3B+filename%3DIMPACT%20OF%20ANAEROBIC%20DIGESTION%20OF%20LIQUID.pdf&Expires=1691706281&Signature=gcL5-n06Ls5jfZKeD~-AtFk8J1ENTg2INF220YUDoSuiwaXoznlAWYOcBbesJRrPhV5Y-pFvDV4LyBxS2PpaCRKIYFsMBou4mlwzBNOC8xEAE2OXxiv9nmV1It-NPCa8YQXJpWdrsseP7KMggSx8BhZZSVXu2RHrCO9pq~vwBhYUTJvSvvv7Uq4NiKNaeqLjR1B72KfGaswVbzK3fsxXUOQNjJ6Hq~k8woFVBoxKc3uTOOJPreVJ5awwsnAuPvi3~CTqkxjzVEayRVxmzUBn-MiX~OX2612AWo2NHGci3c3CYgxpJ~MYjShpcb8Lk2MbwXQPGhukLbiVv9wPIJ09g_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

²⁴ Data from a public records request - Available on request

annual reports.²⁵ The Yakima Regional Clean Air Agency does not monitor air emissions from GDR Energy.

In 2019 Ostrom Mushrooms moved their operation to the Port of Sunnyside due to air quality issues in Thurston County. Growing mushrooms requires importing chicken manure, and this brings air pollution problems. The Yakima Regional Clean Air Agency issued Permit No NSRP-13-OMF-19 that approved installation of five boilers at Ostrom Mushrooms. The YRCAA did not address emissions from composting at the site. There was no SEPA checklist. According to the YRCAA, “The Port of Sunnyside MDNS is what Ostrom used to satisfy the SEPA, The City of Sunnyside signed off on this decision.”²⁶

Ostrom Mushroom pollutants should be considered as part of a cumulative impact, along with emissions from Nutrien Ag Solutions, Horse Heaven Cattle Feeders, and multiple CAFO dairies.

Concentrated Animal Feeding Operations (CAFOs) in Yakima County

According to the WSDA Dairy Nutrient Management Program²⁷:

Agriculture in the LYV is a vibrant and diverse industry and plays an important role in the state’s economy. Milk is the second largest agricultural commodity in Washington in terms of gross state product (GSP) with total value of production estimated at \$1.27 billion annually. Washington remains in the top ten dairy producing states in the nation. Yakima County is home to the largest concentration of dairy cows in the state, accounting for over half of the state’s milk production. There are 31 licensed dairy operations in Yakima County regulated by WSDA. There are also approximately nine dairies within the Yakama Nation territory in the LYV. Livestock operations on tribal lands are under the federal EPA’s jurisdictional authority.

²⁵ Email communication from the Yakima Health District. Available on request.

²⁶ Data from a public records request – Available on request

²⁷ WSDA. Lower Yakima Valley Air Quality Technical Assistance Report
http://www.friendsoftoppenishcreek.org/cabinet/data/WSDA-LowerYakValleyAirQualTechAsstReport-DRAFT_2023-06-29.pdf

According to others the outlook for the dairy industry is not optimistic. The industry increasingly relies on taxpayer subsidies to survive²⁸. Every week more west coast dairies close.^{29, 30} There were over 40 dairies in Yakima County five years ago. Today there are 31.

Concentrated animal feeding operations (CAFOs) pollute air and water. In 2014 the U.S. Environmental Protection Agency (EPA) found that 61% of domestic wells one mile down gradient from five Yakima CAFO dairies pumped water that is unsafe for human consumption.³¹ Three miles down gradient 30% of wells were contaminated. Two wells had Nitrate-N levels greater than 50 mg/L.³² Tax payers have spent well over \$2.3 million to support a Lower Yakima Valley Groundwater Management Area. There is no end to the contamination in sight.³³

Water Quality at the Port of Sunnyside

The Port of Sunnyside has a National Pollutant Discharge Elimination System (NPDES) permit that allows the port to discharge wastewater to Joint Drain 34. This drain empties into the Sulphur Creek Wasteway that empties into the Yakima River. Both the drain and the wasteway have histories of elevated levels of nitrogen, phosphorus, and coliform bacteria.³⁴

Soil at the proposed SS RNG site is Quincy fine loamy sand, a type of soil that is excessively well drained.³⁵ Depth to groundwater is about twenty feet.³⁶ Over the years, the Port of

²⁸ How CAFOs Milk the Public. <http://www.friendsoftoppenishcreek.org/>

²⁹ Capital Press. Selling the Cows – Why More Dairy Farmers are Quitting the Business. https://www.capitalpress.com/ag_sectors/dairy/selling-the-cows-why-more-dairy-farmers-are-quitting-the-business/article_96fd3da6-1c1c-11ee-aadf-938787e6cf99.html

³⁰ Capital Press. Dairy Margins Lowest in DMC History. https://www.capitalpress.com/ag_sectors/dairy/dairy-margin-lowest-in-dmc-history/article_00207228-1cfc-11ee-95dd-b31264fb9b8c.html

³¹ U.S. EPA. Yakima Dairies Consent Order. <https://www.epa.gov/sites/default/files/2017-12/documents/lower-yakima-valley-groundwater-fact-sheet-december-2014.pdf>

³² Community Association for Restoration of the Environment versus Cow Palace, page 13/34. <https://www.epa.gov/sites/default/files/2017-12/documents/lower-yakima-valley-groundwater-fact-sheet-december-2014.pdf>

³³ Lower Yakima Valley Groundwater Management Area. <https://www.yakimacounty.us/541/Groundwater-Management>

³⁴ Water Quality Conditions in Irrigation Waterways within the Roza and Sunnyside Valley Irrigation Districts, Lower Yakima Valley, Washington, 1997-2008. <https://roza.org/wp-content/uploads/2020/07/ReportFinal.pdf>

³⁵ SS RNG Environmental Check List, page 3/13. Natural Resource Conservation Service Web Soil Survey. <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

³⁶ WA Ecology Permitting and Reporting Information System (PARIS) Permit No. WA0052426. <https://apps.ecology.wa.gov/paris/FacilitySummary.aspx?FacilityId=3220496>

Sunnyside has struggled with elevated levels of nutrients in the soils beneath sprayfields³⁷, with failed WET tests³⁸, and with high nitrogen levels in port monitoring wells.³⁹ The SS RNG project will convert 50 acres of land from cropped sprayfields to paved and graveled industry.

Life Cycle Assessments

The SS RNG project is a methane producing facility and not an agricultural operation. The SS RNG project is not subject to rules and regulations that apply to agriculture because it is not an agricultural operation. The SS RNG project should be evaluated according to Life Cycle Analysis guidelines for renewable fuels formulated by the U.S. EPA.

Lifecycle analysis, sometimes referred to as fuel cycle or well-to-wheel analysis, is used to assess the overall greenhouse gas (GHG) impacts of a fuel, including each stage of its production and use. EPA's lifecycle analysis includes significant indirect emissions as required by the Clean Air Act.⁴⁰

If milk cows are housed in barns, estimated emissions from the barns are⁴¹:

- Ammonia: 23.5 kg per cow per year
- Hydrogen sulfide: 0.5 kg per cow per year
- Volatile Organic Compounds (VOCs): 43 kg per cow per year
- Enteric methane: 151 kg per cow per year
- Methane from manure management: 156 kg per cow per year

If a dairy sends manure to a facility such as SS RNG, digestion will remove most of the 156 kg of methane that would have been emitted from manure lagoon storage. But there is more to the story.

³⁷ WA Ecology Permitting and Reporting Information System (PARIS) Permit No. WA0052426.
<https://apps.ecology.wa.gov/paris/FacilitySummary.aspx?FacilityId=3220496>

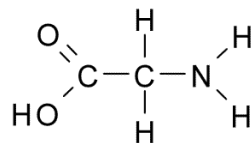
³⁸ WET = Whole Effluent Toxicity. WET measures the percentage of aquatic organisms that die when exposed to a given concentration of effluent.

³⁹ WA Ecology Environmental Information Management Data Base. Monitoring well No. POS MW 9. with nitrate levels around 80 mg Nitrate-N per liter.
<https://apps.ecology.wa.gov/eim/search/Groundwater/GWSearchResults.aspx?ResultType=GroundwaterWellTab&StudyUserIds=MRED0005&StudyUserIdSearchType=Contains&HasGroundwaterData=True>

⁴⁰ U.S. Environmental Protection Agency. Lifecycle Analysis of Greenhouse Gas Emissions under the Renewable Fuel Standard. <https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel#:~:text=Lifecycle%20analysis%2C%20sometimes%20referred%20to,of%20its%20production%20and%20use.>

⁴¹ National Air Emissions Monitoring Study: Data from Two Dairy Freestall Barns in Washington State.
<https://archive.epa.gov/airquality/afo2012/web/pdf/wa5bsummaryreport.pdf>

Digestion also converts organic nitrogen into ammonia and nitrate. Think of nitrogen in organic compounds as part of a complex molecule that contains carbon, hydrogen, nitrogen, and oxygen. Here is one very simple example.



During anaerobic digestion microorganisms break down such compounds into simpler molecules - carbon dioxide (CO₂), methane (CH₄), and ammonia (NH₃) or nitrate (NO₃).⁴²

Much of the carbon leaves treatment as carbon dioxide and methane. The remaining digestate is rich in ammonia and nitrate. When digestate is stacked and stored for later use as fertilizer other microorganisms convert nitrate to nitrous oxide, a greenhouse gas that is 298 times more potent than carbon dioxide. In some cases nitrous oxide emissions from digestate storage and land application cancel out the benefits from harvesting and refining methane. Ammonia emissions may increase by as much as 81% during digestion.⁴³

In summary, for every ton of methane that is removed by anaerobic digestion, another ton of methane is emitted into the atmosphere from enteric fermentation. Downstream emissions from the bio-digestion life cycle are significant and further subtract from benefits. Emissions from manure and digestate transport should be addressed.⁴⁴

Alternative Ways to Reduce Methane Emissions from Dairies

There are more efficient and less costly ways, besides digesters, to reduce emissions of greenhouse gasses from CAFO dairies.⁴⁵ Alternatives include:

- Keeping cows on pasture rather than confining
- Manure Solid Liquid Separation
- Reducing the number of cows per acre
- Conversion from flush to scrape manure management

⁴² WSU Center for Agriculture and Natural Resources. Anaerobic Digestion (Biogas). <https://csanr.wsu.edu/publications-library/energy/anaerobic-digestion/>

⁴³ Holly et al. <https://www.sciencedirect.com/science/article/pii/S0167880917300701>

⁴⁴ U.S. Environmental Protection Agency. Lifecycle Analysis of Greenhouse Gas Emissions under the Renewable Fuel Standard. <https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel#:~:text=Lifecycle%20analysis%2C%20sometimes%20referred%20to,of%20its%20production%20and%20use>

⁴⁵ Petition for Rulemaking before the California Air Resources Board. https://ww2.arb.ca.gov/sites/default/files/2022-01/2021.10.27%20Petition%20for%20Rulemaking%20AIR%20et%20al_.pdf

- Manure composting

None of these alternatives were listed in the SS RNG SEPA review. The range of digester capabilities was not considered. Officials didn't compare outcomes if the project is not approved.

Overburdened Communities

South Yakima County has been classified by state agencies as an “overburdened community” due to air quality problems combined with elevated poverty levels and a high percentage of people of color.⁴⁶ About 25% of the population speaks English less than well, or not at all.

The HEAL Act, RCW 70A.02 applies to the WA State Departments of Ecology, Natural Resources, Commerce, Agriculture, and Transportation. The WA State Departments of Ecology and Transportation responded to the SS RNG Notice of Environmental Review. Neither agency addressed Environmental Justice (EJ) or air quality⁴⁷ in their statements.

To the best of FOTC knowledge, the SS RNG Notice of Environmental Review, and the SS RNG Mitigated Determination of Non-Significance were not translated into Spanish.

Economic Incentives⁴⁸

In Washington and California there are major efforts to reduce emissions from fossil fuels and convert usage to green energy fuels. At this time there are large federal and state incentives that support construction of manure bio-digesters. These incentives will not last forever.

Aaron Smith, an agricultural economist from the University of California at Davis, summarizes the situation better than FOTC can hope to do.⁴⁹ Dr. Smith says:

⁴⁶ WA Ecology. Improving Air Quality in Overburdened Communities. 2023. <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities>

⁴⁷ "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm. RCW 70A.02.010(8)

⁴⁸ WAC 197-11-330(5) says:

A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

⁴⁹ The Dairy Cow Manure Goldrush. 2022. <https://asmith.ucdavis.edu/news/revisiting-value-dairy-cow-manure>

...an anaerobic digester generates approximately 22.5 MMBTU of biogas per cow per year at a cost of \$636. These costs include operating costs and capital cost amortized over 10 years.

The spot price of natural gas has gone up. It exceeded \$5 per MMBTU in the fall, before dropping back below \$4. With the winter storms hitting the southeast this week, it is now back above \$5. At that price, a cow generates $5 \times 22.5 = \$112.50$ worth of gas per year.

In the most recent quarter for which data are available, the LCFS offered subsidies of \$11.37 per diesel-gallon equivalent, which translates to \$81.50 per MMBTU. This is the average subsidy; it varies across dairies based on their estimated life cycle emissions. So, from its annual 22.5 MMBTU of gas, a cow receives a subsidy of \$1,834.

In addition to the LCFS, digesters can earn RIN credits through the federal Renewable Fuel Standard (RFS) program. Our cow's 22.5 MMBTU of gas would generate 292 cellulosic RINs. At the current price of \$3.40 per RIN, this subsidy amounts to \$993.

A typical California dairy cow produces 230 cwt of milk each year. At the current [price](#) of \$21.64/cwt, the cow produces \$4,977 of milk per year. For comparison, the cow generates $1834 + 993 = \$2,827$ of LCFS and RFS subsidies for gas that costs \$636 to produce and which it can sell for \$112.50.

These subsidies will not continue forever. The EPA is revising the RFS requirements, and the LCFS only guarantees that a digester will receive credits for avoided methane for 10 years.

Through the Ag Star program the EPA encourages construction of anaerobic manure digesters to turn methane into renewable natural gas. There are multiple government initiatives that support bio-digesters and even encourage producers to combine and piggy-back funding sources for maximum effect.⁵⁰

⁵⁰ USDA Rural Economic Action Plan: <https://www.rd.usda.gov/inflation-reduction-act/rural-energy-america-program-reap>

NRCS Environmental Quality Incentives Program: <https://www.nrcs.usda.gov/programs-initiatives/eqip-environmental-quality-incentives>

NRCS Conservation Stewardship Program: <https://www.nrcs.usda.gov/programs-initiatives/csp-conservation-stewardship-program>

USDA Farm Service Agency Conservation Loan Program: <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index>

USDA Rural Development Energy Efficiency and Conservation Loan Program: <https://www.rd.usda.gov/programs-services/electric-programs/energy-efficiency-and-conservation-loan-program>

In California dairies receive inflated tax credits because officials only look at a very narrow window of the RNG life cycle and overlook emissions that occur upstream and downstream in the process. In California producers may generate and sell factory farm gas credits that are attributable to programs from which the dairies already receive compensation.^{51, 52}

Some people say that dairymen will make more money from selling manure than from selling milk.⁵³

USDA Advanced Biofuel Payment Program: <https://www.rd.usda.gov/programs-services/energy-programs/advanced-biofuel-payment-program>

U.S. EPA Renewable Energy Certificates: <https://www.epa.gov/green-power-markets/renewable-energy-certificates-reccs>

U.S. EPA Renewable Identification Numbers under the Renewable Energy Program
<https://www.epa.gov/renewable-fuel-standard-program/renewable-identification-numbers-rins-under-renewable-fuel-standard>

WA State: Dept. of Revenue. Beginning July 1, 2018, the law reinstates and expands tax incentives for anaerobic digesters and certain landfills (Engrossed Substitute House Bill (ESHB) 2580 (Chapter 164, Laws of 2018).
https://dor.wa.gov/sites/default/files/2021-11/sn_18_AnaerobicDigestersandLandfills.pdf#:~:text=If%20you%20process%20biogas%20from%20a%20landfill%20or,compress%20biogas%20Equipment%20you%20use%20for%20nutrient%20recovery

WA State Dept. of Commerce. Rural Clean energy Innovation. <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/rural-clean-energy/>

WA State Dept. of Revenue. Sales/Use Exemption for Anaerobic Digesters:
<https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/rural-clean-energy/>

WA State Dept. of Revenue. Anaerobic Digesters – property and leasehold tax exemption.
<https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/rural-clean-energy/>

WA State Dept. of Ecology: Cap and Invest Offsets. <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Cap-and-invest/Offsets>

WA State Dept. of Ecology. Clean Fuel Standard. <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446&full=true>

⁵¹ Petition for Rulemaking before the California Air Resources Board.
https://ww2.arb.ca.gov/sites/default/files/2022-01/2021.10.27%20Petition%20for%20Rulemaking%20AIR%20et%20al_.pdf

⁵² Rethinking Manure Biogas. 2022. https://www.vermontlaw.edu/sites/default/files/2022-08/Rethinking_Manure_Biogas.pdf

⁵³ Hoard's Dairyman. Energy Revenue Could Be a Game Changer for Dairy Farms. 2021. <https://hoards.com/article-30925-energy-revenue-could-be-a-game-changer-for-dairy-farms.html>

Types of bio-digesters and how they operate

There are four common agricultural digester designs: complete mixed, mixed plug-flow, horizontal plug-flow, and covered lagoons.⁵⁴ The proposed SS RNG digester is a complete mixed digester.

Inputs, or feedstocks include animal manure, crops and grasses, fats and oils, food waste and sewage. Manure has a lower potential to produce biogas compared to other organic materials such as food grease and slaughter sludge.⁵⁵

Some digesters operate at thermophilic temperatures (41 – 57 degrees centigrade) while others operate at mesophilic temperatures (18 – 40 degrees centigrade). FOTC has not been able to learn whether the proposed SS RNG project will be thermophilic or mesophilic. Digester efficiency at removing pathogens depends on operating temperatures.

Manure and other feedstocks remain in the digester for 5 to 28 days, depending on the temperature inside the digester. An anaerobic digester is like a giant stomach. Inside the digester a variety of microorganisms digest the feedstocks in four steps – hydrolysis, acidogenesis, acetogenesis, and methanogenesis. Each step involves a different set of micro-organisms and depends on the successful completion of the previous step.

After digestion biogas is removed and digestate is stored as solid and liquid fractions. Solids are used as soil amendments or bedding for animals, a questionable practice. The liquid fraction is returned to participating dairies for land application unless the RNG facility has the capacity for further water purification.

Accidents Happen

This year 18,000 milk cows died in an explosion and fire on a Texas mega-dairy. The fuel was most likely methane produced by the animals in close confinement⁵⁶

In 2013/2014 a manure biodigester in Waunakee Springs Wisconsin experienced three separate spills from leaking manure pipes that pumped tens of thousands of gallons of manure onto the ground.⁵⁷

⁵⁴ WSU Center for Sustaining Agriculture and Natural Resources. Anaerobic Digestion Systems. [Anaerobic Digestion Systems | CSANR | Washington State University \(wsu.edu\)](#)

⁵⁵ Harnessing Renewable Natural Gas for Low-Carbon Fuel: A Roadmap for Washington State. <https://www.commerce.wa.gov/wp-content/uploads/2018/02/Energy-RNG-Roadmap-for-Washington-Jan-2018.pdf>

⁵⁶ The Texas Tribune. Here's how the fire that killed nearly 19,000 Texas cows got started. 2023. <https://www.texastribune.org/2023/05/19/cows-dairy-farm-texas-investigation/#:~:text=The%20April%2010%20fire%20at,cause%20of%20the%20engine%20fire.>

⁵⁷ Milwaukee Journal Sentinel. State-financed manure digester plagued by spills, explosion. 2015. <https://archive.jsonline.com/news/statepolitics/state-financed-manure-digester-plagued-by-spills-explosion-b99435123z1-290263421.html/>

In 2021 the U.S. EPA and the Nebraska Department of Environment fined Big Ox Energy, a biodigester facility, \$1.1 million for violation of multiple environmental laws. “biomass released from the digesters went over the sides of the facility’s roof and onto the ground where it mixed with stormwater, resulting in discharges to adjacent properties and into nearby water bodies.”⁵⁸

In 2022 the cover of a biodigester at White Oaks Farm in North Carolina exploded and released 406,000 gallons of liquid waste that even contained dead pigs. Over 10,000 gallons of the waste reached wetlands.⁵⁹

Closer to home, here is what happened at an Oregon Biodigester in 2013⁶⁰:

The chances of an anaerobic digester exploding are slim to none. But that’s exactly what happened at Tim Bielenberg’s Oak Lea Farm in Aumsville, Ore. “I don’t think you could ever make it happen again,” says Alan Tank, founder and CEO of Revolution Energy Solutions (RES), the company that owns and operates the digester. “We know what component failed, but we don’t know exactly what the ignition source was. What we believe it to have been was static electricity.”

RES worked with Bielenberg over the past two years to commission the low-temperature anaerobic digester that processes up to 30,000 gallons of manure per day to create methane gas, which fuels generators and produces electricity. The process generates 190 kW of electricity, which translates to approximately 1.5 million kWh annually

WAC 197-11-794 says:

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

When regulators play the odds, as they often must, decision making should factor in the value of human life if and/or when biodigesters malfunction.

⁵⁸ U.S. Environmental Protection Agency. Federal Government, State of Nebraska Fine Big Ox Energy and NPC Energy Venture 30 LLC \$1.1 Million for Violations of Multiple Environmental Laws. <https://www.epa.gov/newsreleases/federal-government-state-nebraska-fine-big-ox-energy-and-nlc-energy-venture-30-llc-11>

⁵⁹ Clean Water for North Carolina. ‘Really Terrible Science Experiment’ leads to weeks-long spill from NC waste lagoon. <https://cwfnc.org/really-terrible-science-experiment-leads-to-weeks-long-spill-from-nc-hog-waste-lagoon-read-more-at-https-www-newsobserver-com-news-state-north-carolina-article264779224-htmlstor/>

⁶⁰ Treatment Plant Operator. EPDM Failure Causes Anaerobic Digester Explosion. 2013. https://www.tpomag.com/online_exclusives/2013/03/epdm_failure_causes_anaerobic_digester_explosion

Traffic & Local Roadways

Purposes of a Traffic Impact Analysis are:⁶¹

To ascertain the operational conditions on the adjacent roadway network when a proposed development is accommodated within the existing transportation infrastructure along with other proposed developments.

To identify transportation improvements required to maintain operational standards.

To determine whether access to the proposed development will impact traffic conditions and safety near the site.

To identify present or future transportation system deficiencies with or without the new development.

To provide decision makers with a basis for assessing the transportation implications of approving proposed zoning changes and development applications.

To provide a basis for estimating the cost of proposed mitigation measures.

To determine the “fair share” of the improvement cost to be paid by the developer.

We see no Traffic Impact Analysis in the SS RNG MDNS. We do not know how much wear and tear heavy trucks put on county roads, or the cost of road maintenance.

These are the likely impacted roads if manure is trucked from twenty five dairies within a ten mile radius of the proposed SS RNG facility:

- Interstate I-82
- Highway 241, Highway 22, Highway 12
- County Roads: Midvale Road, Mabton Bickleton Road, Boundary Road, Vance Road, Grandview Pavement, Road, Morse Road, Camp Lane Road, Emerald Road, Snipes Pump Road, Braden Road, Hornby Road, Tear Road, Stover Road, Sheller Road, Harrison Road, East Edison Road, Webster Road, Mohar Road, North Outlook Road, Van Belle Road, Nichols Road, Fordyce Road, Chute Road, Lester Road, Independence Road, Maple Grove Road, Reeves Road, Hudson Road, North Arms Road, East Zillah Drive, North Liberty Road, Beam Road, Carpenter Road, Gurley Road, Alexander Road

⁶¹ City of Issaquah Traffic Impact Analysis Guidelines.

<https://issaquahwa.gov/DocumentCenter/View/725/Transportation-Impact-Analysis-Guidelines?bidId=>

Arguments

1. Did the City of Sunnyside err by determining that that the project “will not have a probable significant adverse impact on the environment and an Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c), provided the measures listed below are taken to mitigate potential adverse impacts”?

The Determination of Non-Significance is improper because, under the current proposal, there are highly probable adverse impacts from air pollution and traffic issues.

RCW 43.21.030(2) (c) Guidelines for state agencies, local governments—Statements—Reports—Advice—Information, states:

The legislature authorizes and directs that, to the fullest extent possible:

(2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

The SS RNG SEPA review neglected to assess air impacts. The SEPA review failed to assess traffic impacts. The SEPA Review provided no clear measures to address toxic emissions, fires, and explosions. The SEPA review failed to address long term productivity – what will happen if cow numbers increase to meet demand for manure? What will happen if the price of natural gas falls? The City of Sunnyside failed to provide detailed statements regarding items (c)i, (c)ii, (c)iii, (c)iv, and (c)v in the rule.

The Notice of Environmental Review, SEPA checklist, and MDNS simply described hoped for outcomes. This is not what RCW 43.21.030(2) (c) requires.

The SS RNG MDNS prescribed mitigation measures for archaeological resources, storm management, and dust control. The MDNS omitted mitigation measures for

- A. air quality
- B. transportation systems & vehicular traffic
- C. risk of explosion and fires
- D. releases or potential releases to the environment of toxic or hazardous materials.

An EIS would address these “Elements of the Environment” that are listed in WAC 197-11-444. Can anyone visualize a situation in which these elements are not at the forefront of public worries?

Air Quality

Regarding Air, the Environmental Checklist states:

- a. *What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.*
Soil-disturbing activities and use of diesel construction equipment may temporarily affect air quality in the immediate vicinity of the facility during construction. Once in operation, the facility is estimated to have emissions that will not exceed Title 5 minor source emission thresholds . . .
These emissions quantities are being refined currently as part of the Clean Air Permit Application with Yakima County. Primary source emissions are boilers, emergency generator, and biogas flare. Lesser sources of emissions (all of which are de minimus) include the manure slurry reception area, digestate fiber separation and storage area, and crop residue grinding and conveyance. Digestate NH₃ emissions are modeled under the daily limit, and are additionally exempt from regulation pursuant to RCW 70A.15.4540.⁶²
- b. *Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.*
Background concentrations will be accounted for in the Air Permit.
- c. *Proposed measures to reduce or control emissions or other impacts to air, if any: We will use Best Available Control Technology (BACT) as being modeled by the air permitting process.*

There are no applications for air permits available for the public to study. The public has no way of knowing how lax or protective air permits might be. Under this scheme a SEPA review and MDNS will already be in place when SS RNG applies to the YRCAA for air permits. Consequently there will be no further SEPA evaluation of air impacts at that time, and no way for the public to compel proper data gathering.⁶³

⁶² FOTC disagrees regarding exemptions for ammonia. RCW 70A.15.4540 applies to fertilizer plants, not to methane refineries.

⁶³ In 2019 Ostrom Mushrooms moved their operation to the Port of Sunnyside due to air quality issues in Thurston County. Growing mushrooms requires importing chicken manure, and this brings air pollution problems. The Yakima Regional Clean Air Agency issued Permit No NSRP-13-OMF-19 that approved installation of five boilers at Ostrom Mushrooms. The YRCAA did not address emissions from composting at the site. There was no SEPA

The answers to b and c are so non-specific as to be useless. This is a possible violation of SMC 18.04.120.E.3 which says:

The applicant's proposed mitigation measures must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibels" or "construction 200-foot storm water retention pond at Y location" are adequate.

Where are the answers to these questions?

- A. What is the predicted composition of tail gas that is vented to the atmosphere?
- B. What is the anticipated quantity of tail gas?
- C. Would emissions from the SS RNG project, combined with emissions from other nearby facilities, increase the levels of criteria and hazardous air pollutants above current safety standards?
- D. What types of air monitors would be installed?

There is insufficient data to prove an absence of adverse environmental effects. An EIS is necessary.

Transportation systems & vehicular traffic

The Environmental Checklist says:

- a. *Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.*
The Port of Sunnyside plans to develop additional access to the industrial park from Alexander road to the north, which will serve the project.
- b. *Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?*
The project area is currently not served by public transit. The nearest public transportation is located over 2 miles northeast, within the City of Sunnyside.
- c. *How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?*
Approximately 30 parking spaces would be created across two locations on the property because of the proposed project (including two ADA spaces). The staff for the project will utilize these parking spaces.

checklist. According to the YRCAA, "The Port of Sunnyside MDNS is what Ostrom used to satisfy the SEPA, The City of Sunnyside signed off on this decision." (From a public records request)

- d. *Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).*

The Port of Sunnyside plans to develop additional paved access to the industrial park which will serve the project and be owned by the City of Sunnyside.

- e. *Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.*

The project area is not located within the vicinity of water, rail, or air transportation.

- f. *How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non passenger vehicles). What data or transportation models were used to make these estimates?*

Total truck trips are expected to be up to 140 truck round trips per day. Employee passenger car trips are expected to be 35 round trips per day during normal business hours. Feedstock deliveries would occur during normal business hours. Weekend traffic is expected to be less. A proprietary scheduling model was used to calculate these numbers.

- g. *Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.*

No.

- h. *Proposed measures to reduce or control transportation impacts, if any:*

The following measure would be implemented to reduce or control potential impacts to local transportation.

- Truck traffic generated by project construction and operation would use city, county, and state-maintained roads that are designated for this type of use, and would not use streets designated as local or private, except for those at the dairies or on the subject property.*

- Wayfinding and signage may be installed to allow truck drivers and public services to navigate safely through the project area.*

County roads are maintained by tax payers. Heavy duty trucks inflict wear and tear on roads that is hundreds of times greater than wear and tear from automobiles. It is good that “city, county, and state-maintained roads are designated for this type of use”, but we need to know who pays for upkeep. Manure spills happen all the time on county roads and cleanup is frequently done by Yakima County.

The City of Sunnyside has not been forthcoming with traffic reports, so citizens are unable to study that information. Citizens are left to speculate, and this is not the best way to form an opinion.

Where are the answers to these questions?

- A. What size trucks would transport manure, cellulosic material, and digestate?
- B. What are the anticipated amounts of nitrogen oxide (NOx) emissions from trucks transporting manure, cellulosic material, and digestate?

- C. What are the estimated types and quantities of exhaust emissions for the trucks that haul manure and digestate?
- D. Would the trucks be covered? If not, what are the anticipated amounts of air emissions from uncovered manure, cellulosic material, and digestate during transport?
- E. Would manure be transported by Sunnyside RNG or by participating dairies?
- F. Would Sunnyside RNG apply for overweight permits?
- G. Would truck drivers possess Commercial Drivers Licenses (CDLs) or will the SS RNG use the agricultural exemption in RCW 46.25.050 for drivers who transport agriculture goods?

There is insufficient data to prove an absence of adverse environmental effects. An EIS is necessary.

Risk of explosion & release or potential releases to the environment of toxic or hazardous materials

Methane gas is highly flammable and explosive in concentrations of 5% to 15%. Hydrogen sulfide is flammable and toxic. Explosions and fires have occurred at biodigesters in other states. Workers die on methane refineries and digester facilities. Methane leaks occur, especially as equipment ages.

The Environmental Checklist says:

Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

The Port of Sunnyside will need to develop infrastructure serving the business park, including, roadways, water and sewer connections, electrical connections, and telecommunications. Initial conversations have taken place and fire response preplanning will be conducted with the Sunnyside Fire & EMS.

Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

Anaerobic-digester-based renewable natural gas facilities produce biogas composed of methane (CH₄) which is a flammable gas (under limited circumstances), hydrogen sulfide (H₂S) which is both a flammable and toxic gas, along with CO₂ and vocs. These components will be contained in anaerobic tanks with membrane roofs and in the downstream raw biogas piping systems designed in compliance with industry standards for sour gas facilities.

Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

Methane (CH₄) and Hydrogen Sulfide (H₂S) are products of the anaerobic digestion process and both are considered hazardous with H₂S also considered toxic. Both components will be present in the facility tanks and piping. Their hazardous and/or toxic characteristics along with response measures, should either be released to the atmosphere, can be found in Safety Data Sheets (SDS). Process chemicals such as solvents, oils, lubricants, antifreeze, ferric chloride and natural gas injection calibration gases such as Nitrogen, Propane, Helium, and potentially odorant will be used in limited quantities.

Proposed measures to reduce or control environmental health hazards, if any:

The following measures may be implemented to reduce or control environmental health hazards:

A health and safety plan would be followed during construction to address worker safety and to minimize exposure to potential environmental health hazards.

To help detect potential leaks quickly, an odorant may be added to the gas

Pressure and flow at the facilities will be monitored to ensure proper operation and reduce potential risk for fire and explosion.

The centralized gas cleaning unit would be designed with internal shutoff valves that will switch automatically if the system detects a malfunction.

The centralized gas cleaning unit would be outfitted with control technology to ensure that emissions are below the acceptable source impact level for air pollutants associated with project operation.

The extremely limited areas where toxic/ hazardous materials are utilized will have impermeable surfaces and curbing to contain any potential spills.

“The following measures may be implemented”, “an odorant may be added to the gas” These vague, inconsequential reassurances leave people who live near the proposed site with no idea what to expect or how to prepare for possible leaks. If SS RNG plans to add odorants, then say so, and tell the public what odors would indicate a methane leak and how to report such odors. If SS RNG plans to install air monitors, then say so. If not, then at least tell the neighbors so they can protect their families themselves.

Where are the answers to these questions?

- A. What are the specifications for tank and lagoon covers?
- B. How would SS RNG pinpoint methane leaks?
- C. Would workers inside the facility wear personal monitors and safety equipment?

- D. What is the worst case scenario? And what protocols do EMS personnel have in place if a disaster should occur?
- E. Who would develop evacuation plans for potential explosions and fires?
- F. What is the total volume for each of the digester tanks on the proposed SS RNG site?
- G. What is the maximum amount of methane in any one tank at one time?
- H. How much methane will be contained at the entire facility at any time?
- I. What is the plan for notifying neighbors of a methane leak or unexpected, dangerous emissions of other gasses?
- J. Under what conditions would hydrogen sulfide convert to sulfuric acid?

WAC 197-11-794 says:

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

There is insufficient data to prove an absence of adverse environmental effects. An EIS is necessary.

2. Did the City of Sunnyside comply with SEPA requirements for public involvement?

WAC 197-11-030 says,

Agencies shall to the fullest extent possible encourage public involvement in decisions that significantly affect environmental quality.

Public Notice:

All Yakima County taxpayers should have been informed of the SS RNG project because this project would likely impact everyone by increasing air pollution county wide, increasing costs for road maintenance, adversely impacting public health, especially the health of children, and incentivizing production of cow manure, a known groundwater pollutant in Yakima County.

The City of Sunnyside mailed a Notice of Environmental Review to agencies with jurisdiction and about 20 property owners who live near the proposed project. To the best of FOTC knowledge the notice was not posted in the Yakima Herald Republic. FOTC scans public notices in that publication daily with the specific purpose of receiving notice of RNG proposals. We were unaware of application until the day after finalizing an MDNS.

This limited public notice may have violated WAC 197-11-500, WAC 197-11-502(1), (3)(b), WAC 197-11-510.

This limited notice may have violated Sunnyside Municipal Code SMC 18.04.160, but FOTC requests clarification regarding this rule because it may or may not apply. Here is why.

Section A of SMC 18.04.160 says:

Whenever the City issues a declaration of nonsignificance under WAC 197-11-340(2) or a declaration of significance under WAC 197-11-360(3), the City shall give public notice as follows:

WAC 197-11-340 relates to a Determination of Non-Significance and WAC 197-11-360 relates to a Determination of Significance.

However the City of Sunnyside did not cite either of these rules in the Notice of Environmental Review. The city cited WAC 197-11-355, stating:

The City of Sunnyside has reviewed the proposed project for probable adverse environmental impacts and expects to issue a Determination of Nonsignificance (DNS) per WAC § 197-11-355

WAC 197-11-355 provides for an optional DNS process. WAC 197-11-355 states:

If a GMA county/city with an integrated project review process (RCW 36.70B.060) is lead agency for a proposal and has a reasonable basis for determining significant adverse environmental impacts are unlikely, it may use a single integrated comment period to obtain comments on the notice of application and the likely threshold determination for the proposal. If this process is used, a second comment period will typically not be required when the DNS is issued (refer to subsection (4) of this section).

However, although the City of Sunnyside has incorporated by reference WAC 197-11-340, WAC 197-11-350, and WAC 107-11-360 into the Sunnyside Municipal Code in Chapter 18.04.080, there is no incorporation by reference of WAC 197-11-355.

Can the City of Sunnyside invoke a rule that it has not incorporated by reference?

Public Involvement

It is difficult to form an opinion on a complex and important topic such as a SEPA review for a complex RNG project. It is impossible to formulate an educated opinion without good data. FOTC and others have requested traffic reports, a geotechnical report and Phase 1 ESA, communications with the Yakima Health District, Critical Aquifer Recharge Area maps for the site, plans for developing access along Alexander Road, and a Notice of Intent to apply for an exemption from solid waste handling permits. At the time of this writing we have received none.

WAC 197-11-060 addresses contents of a SEPA review. Section (3)(a) states:

Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

The SS RNG project is not properly defined in the SEPA Checklist because the checklist does not answer questions that are relevant and important for impacted people, such as:

- A. Is the SS RNG a public or private project as defined in WAC 197-11-928?
- B. Is the SS RNG a major action as defined in WAC 197-11-764? Why or why not?
- C. Is the City of Sunnyside Planning Department an “Agency with Environmental Expertise” as defined in WAC 197-11-714
- D. Would this digester be mesophilic or thermophilic or both?
- E. Would there be testing for pathogens in the solid and/or liquid digestate?
- F. Would the SS RNG accept dead cows and calves as feedstock?
- G. If the SS RNG were to achieve approval and did accept dead cows and calves as feedstock, would SS RNG notify the public?
- H. How large is the proposed lagoon?
- I. How much solid digestate would be stored on site at any time?
- J. What type and thickness of liner would be installed for the proposed digestate lagoon?
- K. Would there be a leak detection system?
- L. Which WA rules and regulations apply to a digestate lagoon on a methane refinery?
- M. What type of foundation would underly storage areas for solid digestate?

3. Did the City of Sunnyside comply with SEPA requirements to consider reasonable alternatives?

There are no references to reasonable alternatives, or even to the no action alternative, in the SS RNG MDNS, But . . .

RCW 43.21C.030(2)(c)(iii) says

all branches of government of this state, including state agencies, municipal and public corporations, and counties shall: Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on: (iii) alternatives to the proposed action

RCW 43.21C.030(2)(e) says

all branches of government of this state, including state agencies, municipal and public corporations, and counties shall: Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources

WAC 197-11-786 defines:

"Reasonable alternative" means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures.

Reference to “reasonable alternatives” are scattered throughout the SEPA rules.

WAC 197-11-030(2) says

Agencies shall to the fullest extent possible:

(c) Prepare environmental documents that are concise, clear, and to the point, and are supported by evidence that the necessary environmental analyses have been made.

(g) Identify, evaluate, and require or implement, where required by the act and these rules, reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.

WAC 197-11-060 says

(3) Proposals.

(a) Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

(ii) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.

WAC 197-11-080(1) says

If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.

WAC 197-11-400 says

(2) An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.

WAC 197-11-402 says

Agencies shall prepare environmental impact statements as follows:

(1) EISs need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.

(9) The range of alternative courses of action discussed in EISs shall encompass those to be considered by the decision maker

WAC 197-11-408 says

(2) To ensure that every EIS is concise and addresses the significant environmental issues, the lead agency shall:

(a) Invite agency, affected tribes, and public comment on the DS (WAC 197-11-360).

(b) Identify reasonable alternatives and probable significant adverse environmental impacts.

WAC 197-11-440 says

(4) Summary. The EIS shall summarize the contents of the statement and shall not merely be an expanded table of contents. The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS, but shall include a summary of the proposal, impacts, alternatives, mitigation measures, and significant adverse impacts that cannot be mitigated. The summary shall state when the EIS is part of a phased review, if known, or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency shall make the summary sufficiently broad to be useful to the other agencies with jurisdiction.

(5) Alternatives including the proposed action.

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The "no-action" alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.

(d) When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan that was adopted after review under SEPA. Further, alternative sites may be evaluated if other locations for the type of proposed use have not been included or considered in existing planning or zoning documents.

WAC 197-11-550(1) says

Comments on an EIS, DNS, scoping notice or proposal shall be as specific as possible and may address either the adequacy of the environmental document or the merits of the alternatives discussed or both.

WAC 197-11-655(3) says

When a decision maker considers a final decision on a proposal:

(a) The alternatives in the relevant environmental documents shall be considered.

(b) The range of alternative courses of action considered by decision makers shall be within the range of alternatives discussed in the relevant environmental documents. However, mitigation measures adopted need not be identical to those discussed in the environmental document.

(c) If information about alternatives is contained in another decision document which accompanies the relevant environmental documents to the decision maker, agencies are encouraged to make that information available to the public before the decision is made.

4. Did the City of Sunnyside have sufficient information before taking action?

Missing Information

WAC 197-11-080 Incomplete or unavailable information says:

(1) If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.

(2) When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking, or that substantial uncertainty exists.

(3) Agencies may proceed in the absence of vital information as follows:

(a) If information relevant to adverse impacts is essential to a reasoned choice among alternatives, but is not known, and the costs of obtaining it are exorbitant; or

(b) If information relevant to adverse impacts is important to the decision and the means to obtain it are speculative or not known;

Then the agency shall weigh the need for the action with the severity of possible adverse impacts which would occur if the agency were to decide to proceed in the face of uncertainty. If the agency proceeds, it shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed.

(4) Agencies may rely upon applicants to provide information as allowed in WAC 197-11-100.

The City of Sunnyside did not document the fact that information on air quality, traffic impacts, explosions and fires, and public health had not been obtained prior to issuance of an MDNS, a possible violation of WAC 197-11-080(2).

The City of Sunnyside certainly could have obtained much of the relevant information on air quality, traffic impacts, explosions and fires, and public health, and this raises the question of a possible violation of WAC 197-11-080(1).

The Yakima Regional Clean Air Agency (YRCAA) has studied previous iterations of the SS RNG project. FOTC has asked the YRCAA to study it. This is the agency with the designated expertise to inform the SEPA process, according to WAC 197-11-920.

It is nearly impossible to understand potential health implications of living near a facility that stores millions of gallons of feces and urine in tanks and produces explosive and flammable methane, without consulting experts. The Yakima Health District (YHD) is the agency with designated expertise in this area, according to WAC 197-11-920. Since the YHD did not comment there is insufficient information regarding public exposure to hazardous and toxic chemicals. This renders the MDNS inadequate.

FOTC believes that lack of comments from the Yakima Health District and the Yakima Regional Clean Area Agency are problematic and probably unacceptable because this lack of comment implies that either there are no health or air problems with the MDNS, or information has not been provided to the Agency with Jurisdiction or the public.

RCW 43.21C.030 states:

(2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

Prior to making any detailed statement, the responsible official shall consult with and obtain comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes (emphasis added)

Under SEPA “shall” is mandatory. See WAC 197-11-700(3)(a)

WAC 197-11-502(2) says:

Consulted agencies have a responsibility to respond in a timely and specific manner to requests for comments (WAC 197-11-545, 197-11-550, and 197-11-724).

WAC 197-11-545 says:

(1) Consulted agencies. If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part Four of these rules.

(2) Other agencies and the public. Lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 are met.

Re Solid Waste WAC 173-350.

According to the MDNS WA Ecology stated:

Solid Waste Management - This project involves a solid waste handling facility that is regulated under WAC 173-350. Please contact your local County Health Department to find out what requirements pertain to the project, and whether a solid waste permit is required. If you believe your facility meets the criteria for permit exemption from WAC 173-350, please fill out a notice of intent form and submit it to Ecology."

i. Staff Response - The proposed development shall work with the Washington State Department of Ecology and acquire all necessary permits for development prior to the issuance of an City of Sunnyside development permits being issued

When FOTC asked for any communications from the Yakima Health District regarding health impacts, the City of Sunnyside said,

No comments were submitted by Health District – Attached SEPA Notice Email

When FOTC asked for a Notice of Intent to apply for an exemption from solid waste handling permits for the facility, the City of Sunnyside said,

We have no knowledge of a Notice of Intent. No documents have been submitted by the applicant.

It is crucial for the public to know who will permit, monitor, and regulate any RNG facility in Yakima County. It is crucial for the public to possess this information before SEPA approval because waiting until afterwards leaves citizens with no leverage for enforcement.

5. Did the City of Sunnyside mis-interpret the law?

Designation of Lead Agency per WAC 197-11-926 & 928

The Notice of Environmental Review for the SS RNG project states:

NOTICE OF ENVIRONMENTAL REVIEW This is to notify agencies with jurisdiction and environmental expertise and the public that the City of Sunnyside, Planning Division, has been established as the lead agency, under WAC § 197-11-928 for this project. The City of Sunnyside has reviewed the proposed project for probable adverse environmental impacts and expects to issue a Determination of Nonsignificance (DNS) per WAC § 197-11-355. The proposal may include mitigation measures under applicable codes and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared. A copy of the subsequent threshold determination may be obtained by request and may be appealed pursuant to SMC Ch. 18.04.

WAC 197-11-928, cited above, states:

When the proposal involves both private and public activities, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is an agency or from the private sector. Any project in which agency and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined under WAC 197-11-926.

The Notice of Environmental Review (NOER) does not state that the proposal involves both public and private activities. The NOER does not characterize the project as public or private. The NOER does not state that public and private interests are intertwined. But the NOER cites WAC 197-11-928.

If the City of Sunnyside is in fact a proponent of this project, then selection of the City of Sunnyside to conduct a SEPA review runs counter to WAC 197-11-926(2) which states:

(2) Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.

It should not be difficult to find another agency with the capacity to conduct a SEPA Review or complete an Environmental Impact Statement.

Environmental Justice

Recent changes in Washington law codify the concept of Environmental Justice (EJ) which is defined by the statement:

Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

This appeal is one effort to bring EJ to Yakima County by involving community members from all walks of life in an open, respectful discussion of a major environmental decision.

Conclusion

For all the reasons listed above the Sunnyside City Hearing Examiner should order a retraction of the Mitigated Determination of Non-Significance, order a Determination of Significance, and completion of an Environmental Impact Statement for the Sunnyside Renewable Natural Gas project. This is important due to the long term changes that such a project would bring to the Sunnyside community and to Yakima County.

Respectfully submitted this _____ day of August, 2023

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