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September 1, 2022

SEP 07 2022

AIR QUALITY DIVISION

Mr. Scott Miller
Air Quality Division
Jackson District
Michigan Department of Environment Great Lakes and Energy
301 E. Louis Glick Highway
Jackson, Michigan 49201

**Re: August 23, 2022 Violation Notice
SRN: N2688, Washtenaw County**

Dear Mr. Miller,

I am writing on behalf of my client Arbor Hills RNG, LLC (AHRNG) in response to the August 23, 2022 Violation Notice (the "VN") issued by the Michigan Department of Environment Great Lakes and Energy ("EGLE"), in which EGLE cited Arbor Hills Energy, LLC (or "AHE")¹ for an alleged violation of Rule 336.1201 ("Rule 201"). As directed in the VN, AHRNG is submitting a written response to the alleged violations.

While AHRNG appreciates that EGLE has indicated that it is not seeking any civil penalties or injunctive relief for the alleged violation, AHRNG nevertheless feels that it is necessary to note for the record that it disputes that a violation occurred for each of the independent reasons set forth below:

1. Construction of an RNG Facility is Specifically Required by the Consent Decree

AHRNG is required to construct a fully operational RNG facility pursuant to strict deadlines set forth in the December 15, 2021 Consent Decree (the "Consent Decree") and the First Amendment to the Consent Decree filed on August 22, 2022 (the "First Amendment"). AHRNG does not believe that it was or is required to seek a construction waiver pursuant to Rule 201 or Rule 336.1202(1) ("Rule 202") for work that it is legally required to perform under a legally enforceable settlement with the EGLE and USEPA.

¹ AHRNG notes that the VN was issued to the wrong entity (Arbor Hills Energy, LLC or "AHE"). AHE does not own and is not involved in the construction or development of the RNG facility. As a result, we are responding to this VN on behalf of AHRNG as we believe that it is the appropriate respondent in this matter.

2. No “Process or Process Equipment” Has Been Installed or Constructed

No violation of Rule 201 has occurred because AHRNG has not begun the construction of any “process” or “process equipment” as those terms are defined at Rule 336.1116(q) and Rule 336.1116(r), respectively. Pursuant to R 336.1116(q) the term “process” means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant. Pursuant to R 336.1116(r) the term “process equipment” means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process. To date, work performed at the site has been limited to site preparation, grading, and the construction of foundations for some portions of the facility. The defined terms “process” and “process equipment” refer to devices, equipment, and auxiliary equipment that will actually emit an air contaminant (e.g., emission units).² To date, AHRNG has not installed any such devices, equipment or auxiliary components. As a result, consistent with the express language of Michigan’s air quality rules, AHRNG could not have violated Rule 201 as alleged by in the VN.

3. Site Preparation and/or the Installation of Foundation Does Not Constitute Installation of a Process or Process Equipment

We believe that EGLE is aware that only site preparation work and the installation of foundations has occurred at this time. To the extent that EGLE is asserting that the construction of foundations at the site is sufficient to allege a violation of Rule 201, AHRNG notes that any such position is inconsistent with the clear and unambiguous language of Rule 201. As noted above, a violation of Rule 201 would necessarily require the construction or installation of a “process” or “process equipment” (such as actual operations or equipment that will emit an air contaminant. Notably, the definitions of “process” and “process equipment” set forth in air quality regulations do not include the construction of foundations or other structures that merely support emission units (or “processes or process equipment”). As a result, the construction of a foundation clearly does not constitute the construction of a “process” or “process equipment” that would trigger Rule 201 requirements. We believe that this position is supported by relevant guidance from USEPA addressing similar definition in corollary federal air quality regulations.³

² Regardless of any policies or positions that EGLE has advanced with regard to what it believes may constitute construction, the express language of promulgated definitions is controlling in any such determination.

³ USEPA recently acknowledged that the plain language of the regulatory definitions was controlling in a draft guidance document entitled “Interpretation of “Begin Actual Construction,” which states in relevant part that, “EPA has determined that its current interpretation of the term “begin actual construction” for the major NSR program does not entirely comport with the plain language of the long-standing regulatory definition of that term. Accordingly, EPA is adopting a revised interpretation that better conforms to the regulatory text. Under EPA’s revised interpretation, a source owner or operator may, prior to obtaining an NSR permit, undertake physical on-site activities . . . provided that those activities do not constitute physical construction on an emissions unit.”



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AHRNG would also request that EGLE consider that even if the construction of a foundation for a building or structure that will support a process or process equipment requires a PTI or construction waivers (which AHRNG disputes for the reasons set forth above), the construction that has occurred to date AHRNG still would not constitute a violation Rule 201 or Rule 202. AHRNG has not begun the construction of foundations for any of the buildings that will actually house “process or process equipment” as those terms are defined in Part 55 regulations. The only process equipment at the AHRNG facility that will emit air contaminants will be the flares for the combustion of off-spec LFG and the regenerative thermal oxidizer. Thus, AHRNG has not begun the construction of the foundations for any buildings or structures that will support either of those emission units (or the “process or process equipment”).

As you know, AHRNG submitted a request for a construction waiver (the “Waiver Request”) on August 17, 2022. Based on statements in the VN, EGLE indicated that it is unable to grant or approve the Waiver Request prior to the submittal of a revised PTI application by AHRNG. Regardless of whether a valid PTI was pending at the time that the VN was issued, AHRNG has now submitted a revised PTI (dated August 31, 2022), ahead of the deadline set forth in the Consent Decree.


Accordingly, AHRNG respectfully requests that EGLE grant AHRNG a construction waiver pursuant to Rule 202, or if unable to do so for any reason, at least confirm that EGLE now considers AHRNG to be in compliance with Rule 201 and Rule 202 from this point forward (based on the submittal of a revised PTI application and pending request for a construction waiver). AHRNG takes its obligations to comply with the all applicable laws and the terms of the Consent Decree very seriously and appreciates EGLE’s prompt attention to this matter. We respectfully request that EGLE provide a written response as soon as possible to prevent any construction delays that could jeopardize timelines and deadlines set forth in the Consent Decree.

We have noted that the VN had proposed a pre-application meeting in advance of any PTI submittal; however, the interim the parties have already scheduled a meeting to discuss the PTI application. We look forward to further discussion regarding the pending application.

Thank you for your assistance in this matter. Please feel free to contact me with any questions or comments.

Very truly yours,

VARNUM



Matthew B. Eugster

cc: Jenine Camilleri
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