

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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	)	
UNITED STATES OF AMERICA, and	)	
	)	
MICHIGAN DEPARTMENT OF	)	
ENVIRONMENT GREAT LAKES, AND	)	
ENERGY,	)	
	)	
Plaintiffs,	)	Civil No. 5:21-cv-12098-SDD-EAS
	)	
v.	)	
	)	
ARBOR HILLS ENERGY LLC.,	)	
	)	
Defendant.	)	
_____	)	

**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, Plaintiffs, the United States of America (“United States”) and the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”), Defendant Arbor Hills Energy LLC (“AHE”), and Arbor Hills RNG LLC (“AHRNG,” an affiliate of AHE) are Parties to a Consent Decree entered by this Court on December 15, 2021 (ECF No. 9, the “Consent Decree”);

WHEREAS, Paragraph 20 of the Consent Decree requires that, by March 31, 2023, either (1) AHRNG develop, construct, and commence operation of a fully operational renewable natural gas facility (“RNG Facility”) that converts landfill gas (“LFG”) into pipeline quality

natural gas and has a conditioning system that virtually eliminates sulfur dioxide (“SO<sub>2</sub>”) emissions; or (2) AHE install, continuously operate, and send all of the LFG routed to its LFG-to-energy facility (“AHE Facility”) to a Sulfur Treatment System (“STS”) that limits combined SO<sub>2</sub> emissions from the AHE Facility to 44.6 tons per year.

WHEREAS, the Consent Decree required AHE to inform EPA and EGLE whether AHRNG will construct the RNG Facility (“RNG Option Compliance Pathway”) or AHE will install the STS at the AHE Facility (“STS Option Compliance Pathway”) by September 30, 2021.

WHEREAS, on September 30, 2021, AHE provided notice to EPA and EGLE (“Compliance Pathway Notice”) that it was selecting the STS Option Compliance Pathway, explaining that, because AHRNG was still working to finalize an LFG purchase agreement with the landfill owner, AHRNG could not commit at that time to the RNG Option Compliance Pathway. *See* ECF No. 7-1.

WHEREAS, AHE indicated in its Compliance Pathway Notice that it planned to meet the upcoming Compliance Milestones for both the STS Option Compliance Pathway and the RNG Option Compliance Pathway (described at Paragraphs 22, and 23 of the Consent Decree), in hopes of transitioning to the RNG Option Compliance Pathway after finalizing the gas purchase agreement. *See id.*

WHEREAS, AHE and AHRNG have met the Compliance Milestones for both the RNG Option Compliance Pathway and the STS Option Compliance Pathway since providing the Compliance Pathway Notice.

WHEREAS, AHE and AHRNG transmitted a letter to Plaintiffs dated March 7, 2022 (“Updated Notice Letter”) indicating AHRNG’s interest in shifting to the RNG Option Compliance Pathway, while also providing notice that, due to supply chain delays associated with COVID-19 impacts, AHRNG would be unable to meet the Final RNG Option Compliance Deadline of March 31, 2023.

WHEREAS, due to the supply chain delays, AHRNG has proposed to delay the Final RNG Option Compliance Deadline to October 31, 2023.

WHEREAS, AHE and AHRNG have agreed to limit the impact of the proposed delay of the RNG Option Final Compliance Deadline by agreeing to a new Consent Decree requirement, as follows. Between May 15, 2023, and October 30, 2023 (“Interim LFG Treatment Period”), all LFG that is of sufficient quality such that it could be used to produce RNG will be treated at the partially constructed RNG Facility to remove hydrogen sulfide, after which the treated gas will either be piped to the AHE Facility to produce electricity or back to the landfill for flaring. AHE has agreed to construct a pipeline to meet this requirement.

WHEREAS, the treatment of LFG during the Interim LFG Treatment Period will ensure that virtually all of the environmental benefits of the RNG Option Compliance Pathway are achieved by May 15, 2023, only 45 days later than the original RNG Option Final Compliance Deadline of March 31, 2023.

WHEREAS, the RNG Option Compliance Pathway will virtually eliminate SO<sub>2</sub> emissions, thereby providing a better environmental outcome than the STS Option Compliance Pathway, which would allow up to 44.6 tons per year of SO<sub>2</sub> emissions from the AHE Facility.

WHEREAS, AHE and AHRNG represent that they have exercised best efforts to prevent or minimize to the greatest extent possible the proposed delay in the RNG Option Final

Compliance Deadline as well as the emissions resulting from that delay, and Plaintiffs have reviewed and evaluated those representations based on the Updated Notice Letter and Affidavit.

WHEREAS, Paragraph 83 of the Consent Decree provides that the terms of the Consent Decree may be modified by written agreement signed by all the Parties.

WHEREAS, Plaintiffs have concluded that the seven-month delay in the RNG Option Final Compliance Deadline, coupled with the creation of the Interim LFG Treatment Period, (which delays by only 45 days the achievement of virtually all of environmental benefits offered by the RNG Option Compliance Pathway), does not constitute a material modification of the Consent Decree requiring Court approval pursuant to Paragraph 83 of the Consent Decree, particularly since the shift to the RNG Option Compliance Pathway delivers significantly better environmental benefits than the previously selected STS Option Compliance Pathway. Thus, the Consent Decree may be modified by the instant filing.

WHEREAS, Plaintiffs, and AHE, and AHRNG have agreed that, upon filing of this First Amendment to Consent Decree, AHE and AHRNG will be deemed to have elected the RNG Option Compliance Pathway under Paragraph 20 of the Consent Decree; AHE's previous election of the STS Option Compliance Pathway under Paragraph 20 of the Consent Decree will be disregarded; and AHE is released from any further obligations relating to the STS Option Compliance Pathway and/or the STS Option Final Compliance Deadline under Paragraphs 21 and/or 23 of the Consent Decree.

WHEREAS, Plaintiffs, AHE, and AHRNG have agreed that, while the PTI application submitted by AHE for the Limited AHE Facility Operations on October 15, 2021 will be withdrawn and resubmitted consistent with the requirements of amended Subparagraph 21(a) of

the Decree, provided at Paragraph 2 of this filing, AHE shall be deemed to be in compliance with the original Subparagraph 21(a) submission requirement.

WHEREAS, in light of the above events, Plaintiffs, AHE, and AHRNG have agreed to modify the Consent Decree as specified herein to establish AHE and AHRNG's shift to the RNG Option Compliance Pathway, to delay the RNG Option Final Compliance Deadline by seven months, and to create an Interim LFG Treatment Period.

NOW, THEREFORE, Plaintiffs, AHE, and AHRNG hereby agree that the Consent Decree shall be amended as follows:

#### AMENDED CONSENT DECREE PROVISIONS

Upon filing of this First Amendment to Consent Decree, the terms and conditions of the Consent Decree shall be modified as follows:

1. Subparagraph 7(y) of the Consent Decree is replaced with the following language:

“RNG Option Final Compliance Deadline” is October 31, 2023. If AHE and AHRNG select the RNG Option Compliance Pathway, this is the deadline by which AHRNG shall develop, construct, and commence operation of a Fully Operational RNG Facility subject to any extensions or modifications to such date under the terms of this Consent Decree.

2. A new Subparagraph 7(kk) shall be added to the Consent Decree, providing as follows:

“Interim LFG Treatment” shall mean the treatment of LFG to the Interim LFG Treatment Efficiency Standard prior to combustion at: (1) the AHE Facility; or (2) the Arbor Hills Landfill flares.

3. A new Subparagraph 7(ll) shall be added to the Consent Decree, providing as follows:

“Interim LFG Treatment Efficiency Standard” means LFG with an H<sub>2</sub>S concentration of 20 ppmv or less.”

4. A new Subparagraph 7(mm) shall be added to the Consent Decree, providing as follows:

“Interim LFG Treatment Period” means the period of time beginning on May 15, 2023, and ending on the day before the RNG Option Final Compliance Deadline, as defined herein.

5. Subparagraph 21(a) is replaced with the following language:

Under the RNG Option Compliance Pathway, AHE shall, within 15 days after the filing of the First Amendment to Consent Decree, withdraw the PTI application submitted for the Limited AHE Facility Operations on October 15, 2021. Within 30 days after the filing of the First Amendment to Consent Decree, AHE shall apply for a PTI for the Limited AHE Facility Operations that occur after the RNG Option Final Compliance Deadline. The PTI application shall, among other things, address: (1) emissions following the RNG Option Final Compliance Deadline from the AHE Facility; and (2) the quantity and specifications of any LFG that is routed from the AHE Facility to the MSW landfill flares. AHE shall comply with the emission limits set forth in any PTI issued by EGLE pursuant to this Subparagraph, subject to AHE’s right to contest or appeal any denial, conditions, or delays of such PTI. Notwithstanding the foregoing: (1) AHE shall not be required to install or operate additional treatment or emissions controls beyond those required under the Consent Decree to reduce, mitigate or control SO<sub>2</sub> emission from the Limited AHE Facility Operations; and (2) AHE shall not be required to combust LFG in excess of the Contract Energy Requirement, but may combust additional LFG provided that such combustion does not exceed the combustion of LFG allowed pursuant to the PTI to be issued pursuant to this Paragraph.

6. Subparagraph 22(a) is replaced with the following language:

Under the RNG Option Compliance Pathway, AHRNG shall, within 15 days after the filing of the First Amendment to Consent Decree, withdraw the PTI application submitted for an RNG Facility on July 29, 2021. Within 30 days after the filing of the First Amendment to Consent Decree, AHRNG shall apply for a PTI for the RNG Facility. The PTI application shall, among other things, address: (1) emissions following the RNG Option Final Compliance Deadline from the RNG Facility; and (2) the quantity and specifications of any LFG that is routed from the RNG Facility to the AHE Facility and/or MSW landfill flares.

7. A new Subparagraph 23(b)(2)(i) shall be added to the Consent Decree, providing as follows:

Within 15 days after the filing of the First Amendment to Consent Decree, AHE shall withdraw the application for a revised PTI it submitted to EGLE pursuant to Subparagraph 23(b)(2) of the Consent Decree.

8. Subparagraph 22(d) is replaced with the following language:

“RNG Option Final Compliance Deadline”. Develop, construct, and commence operation of a Fully Operational RNG Facility by October 31, 2023, subject to any extensions or modifications to such date under the terms of this Consent Decree.

9. Subparagraph 22(f) is replaced with the following language:

Construct a Pipeline. In order to reduce SO<sub>2</sub> emissions from Limited AHE Facility Operations, construct and commence operation of a pipeline to route RNG-Treated LFG from the proposed RNG Facility to the AHE Facility and the MSW landfill flares by May 15, 2023.

10. A new Subparagraph 22(g) shall be added to the Consent Decree, providing as follows:

During the Interim LFG Treatment Period, AHRNG, acting through its affiliates and contractors, shall perform Interim LFG Treatment at or within the RNG Facility of all collected LFG that enters the MSW landfill gas collection and control system. Notwithstanding the foregoing, Interim LFG Treatment shall not include or require the treatment of LFG with an average methane content less than 40% and/or an average oxygen content greater than 5%. Such LFG may instead be routed directly to the MSW landfill flares.

FOR THE UNITED STATES OF AMERICA:

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Date 8/18/22

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