

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

-----)
UNITED STATES OF AMERICA,)
and)
)
MICHIGAN DEPARTMENT OF ENVIRONMENT)
GREAT LAKES, AND ENERGY,)
)
Plaintiffs,)
)
v.)
)
ARBOR HILLS ENERGY LLC,)
)
Defendant.)
-----)

Civil No. 5:21-cv-12098-SDD-EAS

Judge Stephanie Dawkins Davis

CONSENT DECREE

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I. BACKGROUND

A. Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) (“Plaintiffs”), have filed a complaint (“Complaint”) in this action pursuant to Section 113(a) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(a), and Section 5530 of Part 55, Air Pollution Control, of the Michigan Natural Resources and Environmental Protection Act (“Part 55 of the NREPA”), Mich. Comp. Laws § 324.5530, alleging that defendant Arbor Hills Energy LLC (“AHE”) violated the CAA and its implementing regulations and Part 55 of the NREPA and its administrative rules at its landfill gas-to-energy plant (“AHE Facility”) in Northville, Michigan.

B. The AHE Facility is adjacent to the Arbor Hills Landfill, which was previously owned and operated by Advanced Disposal Services Arbor Hills Landfill, Inc., and which is currently owned and operated by Green for Life Environmental Arbor Hills Landfill, Inc. The AHE Facility converts landfill gas (“LFG”), which is generated by decomposition of waste in the landfill, into electricity by burning it as fuel in four gas turbines, three of which have duct burners. This process releases sulfur dioxide (“SO₂”) and other pollutants into the air.

C. The Complaint alleges that defendant AHE has violated, among other things:

i. Title V of the CAA, the federally approved Michigan Title V program, and Section 3 of the applicable Renewable Operating Permit (“ROP”) by emitting SO₂ at levels that exceed limits in the ROP at all four of the AHE Facility’s turbines and all three of its duct burners.

ii. The New Source Performance Standards (“NSPS”) General Provisions, at 40 C.F.R. § 60.11(d), and the National Emission Standards for Hazardous Air Pollutants

(“NESHAP”) General Provisions, at 40 C.F.R. § 63.6(e)(1), by failing to operate the AHE Facility and air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions.

iii. The NSPS for Stationary Gas Turbines, at 40 C.F.R. Part 60, Subpart GG, and Mich. Admin. Code R. 336.1201, by using diesel fuel as an unpermitted alternative to LFG for startup of the plant’s three stationary gas turbines and by failing to monitor the sulfur content of the fuel.

iv. The NESHAP for MSW Landfills, at 40 C.F.R. Part 63, Subpart AAAA, and the MSW Landfill NSPS, at 40 C.F.R. Part 60, Subpart WWW, by allowing the four stacks for the LFG treatment system’s main compressors and the one stack for the two auxiliary compressors to vent untreated LFG when the compressor(s) is turned off.

v. Mich. Admin. Code R. 336.2003 by failing to perform stack testing under representative conditions.

D. AHE does not dispute that it owns and operates the AHE Facility and that its SO₂ emissions have exceeded the limits set in the applicable ROP.

E. AHE does not otherwise admit any liability to the United States or EGLE arising out of the transactions or occurrences alleged in the Complaint.

F. Plaintiffs, defendant AHE, and Arbor Hills RNG LLC (“AHRNG,” an affiliate of Arbor Hills Energy LLC) (collectively, “the Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Plaintiffs and the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or

admission of any issue of fact or law except as provided above, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b). This Court has supplemental jurisdiction over the State law claims asserted by EGLE pursuant to 28 U.S.C. § 1367. The Court has jurisdiction over the Parties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the All Writs Act, 28 U.S.C. § 1651, and Fed. R. Civ. P. 19(a) and 65(d)(2). Venue lies in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and AHE conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, AHE and AHRNG consent to the Court's jurisdiction over this Decree and any such action and over AHE and AHRNG, and consent to venue in this judicial district.

2. For purposes of this Consent Decree, AHE agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and EGLE, and upon AHE and AHRNG and their successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the AHE Facility or the RNG Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve AHE or AHRNG of their obligations to ensure that the terms of the Decree are implemented. At least 30

Days prior to such transfer, AHE and/or AHRNG shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, DOJ, and the United States Attorney for the Eastern District of Michigan, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the AHE Facility or the RNG Facility without complying with this Paragraph constitutes a violation of this Decree.

5. AHE and AHRNG shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work at the AHE Facility or RNG Facility required under this Consent Decree. AHE and AHRNG shall condition any such contract(s) upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, AHE and AHRNG shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. “AHE” means defendant Arbor Hills Energy LLC, the defendant in the above-captioned matter and the owner and operator of the AHE Facility.
- b. “AHE Facility” means the LFG-to-energy plant located in Northville, Michigan that is owned and operated by Arbor Hills Energy LLC.

- c. “AHRNG” means Arbor Hills RNG LLC, the anticipated owner and operator of the RNG Facility that will be constructed under the RNG Option Compliance Pathway.
- d. “Clean Air Act” or “CAA” means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.
- e. “Complaint” means the complaint filed by the United States and EGLE in this action.
- f. “Compliance Milestone” means any deadline included in this Consent Decree.
- g. “Consent Decree” or “Decree” means this Decree.
- h. “Contract Energy Requirement” means up to 5,000 Megawatt Hours (MWh) of electricity each calendar year.
- i. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.
- j. “DOJ” means the United States Department of Justice and any of its successor departments or agencies.
- k. “EGLE” means the Michigan Department of Environment, Great Lakes, and Energy.
- l. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.
- m. “Effective Date” means the date of entry of this Consent Decree, as

provided in Section XV.

- n. “Excess LFG Combustion” means the combustion at the AHE Facility of LFG generated by the adjacent landfill that: (1) exceeds the Contract Energy Requirement; (2) is not otherwise combusted in flares operated by the landfill; and (3) does not exceed the combustion of LFG allowed pursuant to the PTI to be issued pursuant to Subparagraph 21(a).
- o. “Fully Operational” means operating consistent with final design specifications.
- p. “LFG” means the landfill gas generated by decomposition in the landfill.
- q. “Limited AHE Facility Operations” means the operations of the AHE Facility that are necessary to combust LFG to satisfy the AHE Facility’s Contract Energy Requirement and/or for Excess LFG Combustion.
- r. “MSW landfill” means a municipal solid waste landfill such as the Arbor Hills Landfill formerly operated by Advanced Disposal Services Arbor Hills Landfill, Inc. and which is currently owned and operated by Green for Life Environmental Arbor Hills Landfill, Inc.
- s. “Paragraph” means a portion of this Decree identified by an Arabic numeral.
- t. “Parties” means the United States, EGLE, AHE, and AHRNG.
- u. “PTI” means a Permit-to-Install under Mich. Admin. Code R. 336.1201, part of the federally enforceable State Implementation Plan for Michigan.
- v. “Required Control Efficiency” means the efficiency by which the Sulfur Treatment System is required to operate, defined by this Consent Decree

as limiting combined SO₂ emissions from Turbines 1, 2, and 3 (collectively “FG TURBINES-S3 in the ROP) and their associated duct burners (collectively “FG DUCT BURNERS-S3” in the ROP) and Turbine 4 (“EU TURBINE 4-S3” in the ROP) to 44.6 tons per year on a twelve-month rolling average.

- w. “RNG Facility” means Renewable Natural Gas facility, which is a facility that will convert LFG into pipeline-quality natural gas.
- x. “RNG Option Compliance Pathway” means one of two primary compliance options for AHE and AHRNG, wherein AHRNG opts to proceed with the development of a Fully Operational RNG Facility.
- y. “RNG Option Final Compliance Deadline” is March 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.
- z. “RNG-Treated LFG” means LFG which has been routed through the RNG Facility’s gas conditioning system for hydrogen sulfide (“H₂S”) treatment.
- aa. “ROP” means Renewable Operating Permit No. MI-ROP-N2688-2011a), which EGLE issued under Michigan’s Renewable Operating Permit Program, enacted to implement Title V of the Clean Air Act.
- bb. “Section” means a portion of this Decree identified by a Roman numeral.
- cc. “SIP requirements” mean State Implementation Plan requirements that

provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards.

- dd. “SO₂” means the pollutant sulfur dioxide.
- ee. “State” means the State of Michigan.
- ff. “STS” means Sulfur Treatment System.
- gg. “STS Option Compliance Pathway” means one of two primary compliance options for AHE, wherein AHE opts to install an STS at the AHE Facility.
- hh. “STS Option Final Compliance Deadline” means March 31, 2023. If AHE selects the STS Option Compliance Pathway, this is the deadline by which AHE shall install, continuously operate, and send all of the LFG routed to the Facility to an STS that achieves the Required Control Efficiency subject to any extensions or modifications to such date under the terms of this Consent Decree.
- ii. “Subparagraph” means a portion of this CD identified by a lower-case Roman numeral or letter.
- jj. “United States” means the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

8. AHE shall make payments to the Plaintiffs in the manner described in Paragraphs 8-15 below.

9. Payment to EPA. AHE shall pay \$375,000 as a civil penalty, plus interest as described in this Paragraph.

- a. \$50,000 within 30 days after the Effective Date;
- b. \$162,500 within one year of the Effective Date; and
- c. \$162,500 within two years of the Effective Date.

AHE shall include with the first installment payment an additional amount for interest accrued at the rate of 3.25% per year on the total penalty amount from date of lodging through the date of payment. AHE shall include with each subsequent payment an additional amount for interest accrued at the rate of 3.25% per year on the unpaid balance from the date of the previous payment through the date of the payment. After the Effective Date, the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Eastern District of Michigan will provide to AHE a calculation of the interest due for each payment under this Paragraph and Paragraph 12.

10. AHE shall pay the civil penalty due under Paragraph 8 by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to AHE by the Financial Litigation Unit of the United States Attorney’s Office for the Eastern District of Michigan after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which AHE shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Thomas Plant
Vice President-Finance and Treasurer
Arbor Hills Energy LLC
One North Lexington Avenue, Suite 1450
White Plains, New York 10601
tplant@fortistar.com
914-421-4900

on behalf of AHE. AHE may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices).

11. At the time of payment, AHE shall send notice that payment has been made: (a) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (b) to DOJ and EPA via email or regular mail in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States, et al. v. Arbor Hills Energy LLC*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12226.

12. Payment to State of Michigan. Within 30 Days after the Effective Date of this Consent Decree, AHE shall pay a civil penalty of \$375,000 to the General Fund of the State of Michigan in the form of checks made payable to the “State of Michigan” and mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashiers Office, P.O. Box 30657, Lansing, MI 48909-8157 on the schedule and in the amounts set forth below:

- a. \$50,000 within 30 days after the Effective Date;
- b. \$162,500 within one year of the Effective Date; and
- c. \$162,500 within two years of the Effective Date.

13. When complying with the payment requirements in Paragraph 12, AHE shall include with the first installment payment an additional amount for interest accrued at the rate of 3.25% per year on the total penalty amount from date of lodging through the date of payment. AHE shall include with each subsequent payment an additional amount for interest accrued at the

rate of 3.25% per year on the unpaid balance from the date of the previous payment through the date of the payment.

14. Defendant may pay any payment required under Paragraphs 9 and 12 prior to its due date, but must contact the FLU in advance for a determination regarding the amount of interest to be included with the payment. If any installment payment includes an overpayment, the amount of the overpayment will be applied to the remaining principal.

15. If AHE fails to make any payment required under Paragraphs 9 and 12 by the due date, Plaintiff may send AHE a written notice of late payment. If AHE fails to make the payment and to pay all interest and stipulated penalties owed within 30 Days of receipt of the notice, all remaining payments and all accrued interest will be due immediately. Interest will continue to accrue on any unpaid amounts until AHE pays the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 39.

16. If AHE becomes the subject of a proceeding under the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all remaining payments and all accrued interest due to EPA and the State of Michigan under Paragraphs 9 and 12 will be due immediately. Interest will continue to accrue on any unpaid amounts until AHE pays the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 39.

17. AHE agrees that this settlement takes into account AHE's ability to pay and that AHE's actual liability would have otherwise been a higher amount.

18. AHE shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or State or local income tax.

VI. COMPLIANCE REQUIREMENTS

19. AHE shall comply with Sections 111, 112, and 502 of the Clean Air Act, 42 U.S.C. §§ 7411, 7412, and 7661a and 40 C.F.R. Parts 60, 63, and 70, with respect to the AHE Facility, and the ROP.

20. Either (a) AHRNG shall develop, construct, and commence operation of a Fully Operational RNG Facility by the RNG Option Final Compliance Deadline; or (b) AHE shall install, continuously operate, and send all of the LFG routed to the AHE Facility to an STS that meets the Required Control Efficiency by the STS Option Final Compliance Deadline. As an initial Compliance Milestone, AHE shall inform EPA and EGLE whether AHRNG is pursuing the RNG Option Compliance Pathway or AHE is pursuing the STS Option Compliance Pathway by September 30, 2021.

21. Limited AHE Facility Operations. Notwithstanding whether AHE and AHRNG opt to pursue the RNG Option Compliance Pathway or the STS Option Compliance Pathway, AHE needs to be able to conduct Limited AHE Facility Operations to satisfy its Contract Energy Requirement and/or to allow for Excess LFG Combustion. AHE shall conduct the Limited AHE Facility Operations in conformance with the following requirements:

- a. Under the RNG Option Compliance Pathway, AHE shall apply for a PTI for the Limited AHE Facility Operations by October 15, 2021. AHE shall comply with relevant emission limits set forth in any PTI issued by EGLE for the Limited AHE Facility Operations, 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 SO₂ emissions 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.

- b. In the event that AHE and AHRNG pursue the RNG Option Compliance Pathway, then by the RNG Option Final Compliance Deadline, AHE shall:
 - (1) Use only RNG-Treated LFG to meet the Contract Energy Requirement, except as may be necessary in the event that the RNG Facility is not operational due to a malfunction or a Force Majeure event, provided that the AHE Facility shall comply with relevant emissions limits set forth in any PTI issued by EGLE for the Limited AHE Facility Operations.
 - (2) Cease Excess LFG Combustion, except as may be necessary in the event that the RNG Facility is not operational due to a malfunction or a Force Majeure event, provided that the AHE Facility shall comply with relevant emissions limits set forth in any PTI issued by EGLE for the Limited AHE Facility Operations.
- c. In the event that AHE pursues the STS Option Compliance Pathway, AHE shall submit a permit application and install and operate the STS consistent with the schedule set forth in Paragraph 23 below.

22. RNG Option Compliance Pathway. If AHE and AHRNG opt to pursue the RNG Option Compliance Pathway, AHE and AHRNG shall meet the following RNG Compliance Milestones by the deadlines provided.

- a. PTI Application. Submit a PTI application by July 31, 2021 [completed], provided that the PTI application may need to be revised, supplemented or amended based on any subsequent changes to the design specifications.
- b. Design Specifications. Provide EPA and EGLE the final design specifications for the RNG Facility by April 30, 2022.
- c. Notice to Proceed. Issue a notice to proceed to construction contractors, and provide EPA and EGLE a copy of that notice, by July 31, 2022.
- d. RNG Option Final Compliance Deadline. Develop, construct, and commence operation of a Fully Operational RNG Facility by March 31, 2023.
- e. Comply with New PTI. Comply with the PTI SO₂ requirements whenever the RNG Facility is operating, subject to any and all rights, claims and defenses that it may have to contest, challenge or appeal the terms and conditions of any PTI.
- f. Construct a Pipeline. In order to reduce SO₂ 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 by March 31, 2023.

23. If AHE and AHRNG do not elect to proceed with the RNG Option Compliance Pathway and instead AHE opts to pursue the STS Option Compliance Pathway, then AHE shall meet the following STS Compliance Milestones by the deadlines provided:

- a. STS Design Specifications. By September 30, 2021, submit to EPA and EGLE the proposed design specifications for an STS technology that will achieve the Required Control Efficiency. EPA and EGLE have authority to approve or disapprove the proposed STS design specifications provided however that the agencies' review of the design specifications shall be limited to a determination as to whether the proposed STS is capable of achieving the Required Control Efficiency. If the design specifications are acceptable, then EPA and EGLE will approve them within 60 Days after the date the design specifications are submitted or within 30 Days after the date they are resubmitted. AHE retains responsibility for ensuring that the approved design specifications meet the Required Control Efficiency.
- b. PTI Application.
 - (1) Within 30 Days after EPA and EGLE provide written approval of the proposed design specifications, AHE shall meet with EGLE to discuss what AHE must include in the application for a revised PTI. Upon AHE's request, EPA may attend and participate in any such meeting.
 - (2) Within 60 Days after EPA and EGLE provide written approval of the proposed design specifications, AHE shall submit to EGLE an application for a revised PTI that includes, but is not limited to: (a)

the STS technology approved by EPA and EGLE in response to the STS design specification submission; (b) the corresponding emissions limits for the selected STS technology; (c) related preventative maintenance plans; (d) plans for use of diesel fuel, unless AHE's use of diesel fuel has been authorized in a previous permit issued by EGLE; (e) plans for corrected turbine size unless corrected turbine size has been authorized in a previous permit issued by EGLE; and (f) testing protocol for demonstrating compliance with the Required Control Efficiency.

(3) EGLE will issue the revised PTI within 150 Days after EGLE determines that the PTI application is complete and acceptable.

- c. STS Procurement. AHE shall provide EPA and EGLE confirmation of STS purchase (*i.e.*, a fully executed purchase contract or a nonrefundable deposit) within 30 Days after EGLE's issuance of a revised PTI.
- d. Construction Timeline. AHE shall provide EPA and EGLE with monthly written updates to the addresses set forth in Section XIV (Notices) concerning the status of construction, shipment, and installation of the STS from the date of procurement until the date of installation.
- e. STS Option Final Compliance Deadline. By March 31, 2023, AHE shall install, continuously operate, and send all of the LFG routed to the AHE Facility to an STS that achieves the Required Control Efficiency.
- f. SO₂ Monitoring Provisions. Within 60 Days after completion of installation of the STS, AHE shall implement monitoring protocols, for all

four turbines to demonstrate that the SO₂ concentration of the gas leaving the turbines achieves the Required Control Efficiency and that the AHE Facility is in compliance with applicable SO₂ emissions limits set forth in the revised PTI, as follows:

- (1) AHE shall conduct performance testing as required pursuant to Subparagraph (g) of this Paragraph.
- (2) AHE shall perform Draeger tube sampling for H₂S at the outlet of the STS at least once each week during any period when the turbines are operating to calculate the effluent SO₂ emissions based on the results of performance testing.

g. SO₂ Performance Testing Requirements. Within 60 Days after completion of installation of the STS and continuing annually thereafter, AHE shall conduct performance tests for SO₂ pursuant to Mich. Admin. Code R 336.2003 to report compliance with the SO₂ limits in the revised PTI and with the Required Control Efficiency. AHE shall conduct performance tests as follows:

- (1) AHE shall conduct a performance test for SO₂ annually for Turbine 4.
- (2) AHE shall conduct a performance test annually on one of the three additional turbines (Turbines 1-3) each year, provided that a different turbine shall be tested each year of every three-year period.
- (3) No two annual tests shall be conducted less than 11 months apart.

- (4) The reference methods and procedures for conducting SO₂ performance tests and for determining compliance with the applicable SO₂ emissions limit shall be those specified in 40 C.F.R. § 60.8(f) and 40 C.F.R. Part 60, Appendix A, Reference Method 6C.
- (5) Each test shall consist of three separate runs performed under representative operating conditions, not including periods of startup, shutdown, or malfunction. The sampling time for each run shall be at least 60 minutes.

- h. Comply with Revised PTI. AHE shall comply with the revised PTI establishing new SO₂ limits consistent with the controls required in this Consent Decree subject to any and all rights, claims and defenses that it may have to contest, challenge or appeal the terms and conditions of any PTI.

24. Proper Operation of Control Equipment at AHE Facility. Regardless of whether AHE and AHRNG elect to pursue the RNG Option Compliance Pathway or AHE elects to pursue the STS Option Compliance Pathway, within 180 Days after the lodging of the Consent Decree, AHE shall ensure that the AHE Facility captures all emissions from the existing LFG compressor atmospheric vents and reroutes such LFG to the flares at the adjacent landfill, or back to the inlet of an operating turbine.

25. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for EPA approval pursuant to this Consent Decree, EPA, after consultation with EGLE, will in writing: (a) approve the submission; (b) approve the submission

upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If a submission is disapproved, EPA and EGLE will identify in writing any and all reasons for such disapproval in reasonable detail.

26. If the submission is approved pursuant to Subparagraph 24(a), AHE and/or AHRNG shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Subparagraph 24(b) or (c), AHE and/or AHRNG shall, upon written direction from EPA after consultation with EGLE, take all actions required by the approved plan, report, or other item that EPA after consultation with EGLE determines are technically severable from any disapproved portions, subject to AHE's and/or AHRNG's right(s) to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

27. If the submission is disapproved in whole or in part pursuant to Subparagraph 24(c) or (d), AHE and/or AHRNG shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, AHE and/or AHRNG shall proceed in accordance with the preceding Paragraph.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA after consultation with EGLE may again require AHE and/or AHRNG to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to AHE's and/or AHRNG's right(s) to invoke Dispute Resolution and the right of EPA and EGLE to seek stipulated penalties as provided in Paragraph 42.

29. If AHE and/or AHRNG elects to invoke Dispute Resolution as set forth in Paragraphs 26 or 27, AHE and/or AHRNG shall do so by sending a Notice of Dispute in accordance with Paragraph 57 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

30. Any stipulated penalties applicable to the original submission, as provided in Section VIII, accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely; provided that, if the original submission was so deficient as to constitute a material breach of AHE's and/or AHRNG's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

31. Permits. Where any compliance obligation under this Section requires AHE and/or AHRNG to obtain a federal, state, or local permit or approval, pursuant to Part 55 of the NREPA and its administrative rules, AHE and/or AHRNG shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. AHE and/or AHRNG may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if AHE and/or AHRNG has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

32. AHE and/or AHRNG shall submit the following reports to EPA, DOJ, and EGLE at the addresses set forth in Section XIV (Notices):

- a. By July 31st and January 31st of each year after the lodging of this

Consent Decree, until termination of this Decree pursuant to Section XVIII, AHE and/or AHRNG shall submit to EPA and EGLE according to the contact information in Section XIV (Notices) a semi-annual report for the preceding six months that includes the status of any construction or compliance measures; completion of milestones; the results of any compliance monitoring and performance tests; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance information; and reports to state agencies.

- b. If either AHE or AHRNG violates, or has reason to believe that it may violate, any requirement of the Consent Decree, including any violation resulting from malfunctions, any exceedance of an emissions limit, any failure to install, or commence operation of any control technology, AHE or AHRNG shall notify DOJ, EPA, and EGLE of such event, and its likely duration, in writing, within 30 Days after the Day AHE or AHRNG first becomes aware of the violation or possible violation, with an explanation of the likely root cause of the event, remedial steps or corrective action taken, or to be taken, including all design, operation, and maintenance changes consistent with good engineering practices, if any, to reduce or eliminate the probability of recurrence of such violation. If the cause of a violation cannot be fully explained at the time the notification is due, AHE shall so state in the notification. AHE or AHRNG shall investigate the cause of the violation and shall then submit an amendment to the

notification, including a full explanation of the cause of the violation, within 30 Days of the Day AHE or AHRNG becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves AHE or AHRNG of its obligation to provide the notice required by Section IX (Force Majeure).

33. Whenever any violation of this Consent Decree or of any applicable permits or any other event affects performance under this Decree, or the operation of the AHE Facility or the RNG Facility may pose an immediate threat to the public health or welfare or the environment, AHE or AHRNG shall notify EPA and EGLE by telephone or by email, pursuant to Section XIV (“Notices”), as soon as possible, but no later than 24 hours after AHE or AHRNG first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph. Nothing in this Consent Decree shall be interpreted or construed to impose any requirements or obligations upon AHE or AHRNG relating to events occurring at the landfill adjacent to the AHE Facility notwithstanding whether the landfill site is referenced in or governed by a common permit.

34. Each report submitted by AHE and/or AHRNG under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

35. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve AHE or AHRNG of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

38. AHE and AHRNG shall be liable for stipulated penalties to the United States and EGLE for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. Late Payment of Civil Penalty. If AHE fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, AHE and/or AHRNG shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

40. RNG Option Final Compliance Deadline and STS Option Final Compliance Deadline.

- a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Subparagraphs 22.d) and 23.e).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$3,500.....	1st through 30th Day
\$6,000.....	31st through 60th Day
\$8,500.....	61st Day and beyond

- b. These penalties are applicable to the RNG Option Final Compliance Deadline and STS Option Final Compliance Deadline, both of which are March 31, 2023 as established in Subparagraphs 22.d) and 23.e).

41. Compliance Milestones.

- a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Subparagraph 40.b(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.....	1st through 30th Day
\$1,000.....	31st through 60th Day
\$1,500.....	61st Day and beyond

- b. These penalties are applicable to the below Compliance Milestones:
 - (1) Timely notice to EPA and EGLE of whether AHE and/or AHRNG is/are pursuing the RNG or STS Option Compliance Pathway by September 30, 2021, as required under Paragraph 19.
 - (2) Compliance Milestones for Limited AHE Facility Operations, as required under Subparagraphs 20 (21.a) and (b).
 - (3) Compliance Milestones for the RNG Option Compliance Pathway, as required under Subparagraphs 22 (a), (b), (c), (e), and (f).
 - (4) Compliance Milestones for the STS Option Compliance Pathway, as required under Subparagraphs 23 (a), (b), (c), (d), (f), (g), and (h).

- (5) Routing of all emissions from LFG compressor atmospheric vents to a flare or a control system as required under Paragraph 24.
- (6) Timely notification regarding violations or potential violations as required under Subparagraph 32.b).

42. Reporting Requirements. The following stipulated penalties shall accrue per report and/or notification per Day for each violation of the reporting and/or notification requirements of Section VII:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 30th Day
\$750.....	31st through 60th Day
\$1,500.....	61st Day and beyond

43. Transfer of Ownership. If AHE fails to: (a) provide a copy of this Consent Decree to any proposed transferee of the AHE Facility and/or the RNG Facility consistent with Paragraph 4; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the AHE Facility or the RNG Facility, as required by Paragraph 4; or (c) provide to EPA a copy of the proposed written agreement with the transferee as required by Paragraph 4, AHE and/or AHRNG shall pay a stipulated penalty of \$1,000 for each iteration of (a), (b), and (c) of this Paragraph.

44. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

45. AHE and AHRNG shall pay stipulated penalties to the United States and EGLE within 30 Days after a written demand by either Plaintiff. AHE and AHRNG shall pay 50

percent of the total stipulated penalty amount due to the United States and 50 percent to EGLE. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

46. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree, but waiver shall only occur in writing by each Plaintiff.

47. Stipulated penalties shall continue to accrue as provided in Paragraph 43, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or EGLE that is not appealed to the Court, AHE and/or AHRNG shall pay accrued penalties determined to be owing, together with interest, to the United States and EGLE within 30 Days after the effective date of the agreement or the receipt of EPA's or EGLE's decision or order.
- b. If the dispute is appealed to the Court and the United States or EGLE prevails in whole or in part, AHE and/or AHRNG shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of issuance of the Court's decision or order, except as provided in Subparagraph (c) of this Paragraph.
- c. If any Party appeals the District Court's decision, AHE and/or AHRNG shall pay all accrued penalties determined to be owing, together with interest, within 15 Days after receiving the final appellate court decision.

48. AHE and/or AHRNG shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 10 and with the confirmation notices required by Paragraph 11,

except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. AHE and/or AHRNG shall pay stipulated penalties owing to EGLE in the manner set forth in Paragraph 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

49. If AHE and/or AHRNG fails to pay stipulated penalties according to the terms of this Consent Decree, AHE and/or AHRNG shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or EGLE from seeking any remedy otherwise provided by law for AHE's and/or AHRNG's failure(s) to pay any stipulated penalties.

50. The payment of penalties and interest, if any, shall not alter in any way AHE's and/or AHRNG's obligation(s) to complete the performance of the requirements of this Consent Decree.

51. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or EGLE's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States and EGLE expressly reserve the right to seek any other relief it deems appropriate for AHE's and/or AHRNG's violation(s) of this Decree or applicable law, including but not limited to an action against AHE and/or AHRNG for statutory penalties, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

52. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of AHE or AHRNG, as the case may be, of any entity affiliated with or controlled by AHE or AHRNG, or of AHE’s or AHRNG’s’ contractors that delays or prevents the performance of any obligation under this Consent Decree despite best efforts of either or both, as the case may be, to fulfill the obligation.

- a. The requirement that AHE and/or AHRNG exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure, such that the delay and any adverse effects of the delay are minimized.
- b. “Force Majeure” does not include AHE’s and/or AHRNG’s financial inability to perform any obligation under this Consent Decree.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, AHE or AHRNG shall provide notice by telephone or by email to EPA and EGLE within 72 hours of when AHE or AHRNG first knew that the event might cause a delay. Within seven Days thereafter, AHE or AHRNG shall provide in writing to EPA and EGLE an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; AHE’s or AHRNG’s rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a

statement as to whether, in the opinion of AHE or AHRNG, such event may cause or contribute to an endangerment to public health, welfare or the environment. AHE or AHRNG shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude AHE or AHRNG from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. AHE or AHRNG shall be deemed to know of any circumstance of which AHE or AHRNG, any entity controlled by AHE or AHRNG, or AHE's or AHRNG's contractors, knew or should have known.

54. If EPA, after a reasonable opportunity for review and comment by EGLE, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA, after a reasonable opportunity for review and comment by EGLE, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify AHE or AHRNG in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

55. If EPA, after a reasonable opportunity for review and comment by EGLE, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify AHE or AHRNG in writing of its decision.

56. If AHE or AHRNG elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution) in connection with any notice of Force Majeure event under Section IX, it shall do so no later than 20 Days after receipt of EPA's notice. In any such

proceeding, AHE or AHRNG shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that AHE complied with the requirements of Paragraphs 52 and 53. If AHE or AHRNG carries this burden, the delay at issue shall be deemed not to be a violation by AHE of the affected obligations of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

57. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. AHE's or AHRNG's failure to seek resolution of a dispute under this Section shall preclude AHE or AHRNG from raising any such issue as a defense to an action by the United States or EGLE to enforce any obligation of AHE or AHRNG arising under this Decree.

58. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when AHE or AHRNG sends DOJ, EPA, and EGLE a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, AHE or AHRNG invokes formal dispute resolution procedures as set forth below.

59. Formal Dispute Resolution. AHE and/or AHRNG shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ, EPA, and EGLE a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting AHE's and/or AHRNG's position(s) and any supporting documentation relied upon by AHE.

60. The United States will send AHE and/or AHRNG its Statement of Position within 45 Days of receipt of AHE's and/or AHRNG's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on AHE and/or AHRNG, unless AHE or AHRNG files a motion for judicial review of the dispute in accordance with the following Paragraph.

61. Judicial Dispute Resolution. AHE and/or AHRNG may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of AHE's and/or AHRNG's position(s) on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

62. The United States shall respond to AHE's and/or AHRNG's motion within the time period allowed by the Local Rules of this Court. AHE and/or AHRNG may file a reply memorandum, to the extent permitted by the Local Rules.

63. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 58 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and/or EGLE under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, AHE or AHRNG shall bear the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
- b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 58, AHE or AHRNG shall bear the burden of demonstrating that its position complies with the terms and conditions of this Consent Decree.

64. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of AHE or AHRNG under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance,

but payment shall be stayed pending resolution of the dispute as provided in Paragraph 46. If AHE or AHRNG does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

65. The United States, EGLE, and their representatives, including employees, attorneys, contractors, and consultants, shall have the right of entry into the AHE Facility and RNG Facility, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or EGLE in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by AHE or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data, that the United States and/or EGLE representative(s) assert is relevant to the Consent Decree; and
- e. assess AHE's or AHRNG's compliance with this Consent Decree.

66. Upon request, AHE and AHRNG shall provide EPA and EGLE or their authorized representatives splits of any samples taken by AHE or AHRNG. Upon request, EPA and EGLE shall provide AHE or AHRNG splits of any samples taken by EPA or EGLE.

67. Until five years after the termination of this Consent Decree, AHE and AHRNG shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or

its contractors' or agents' possession or control, and that relate in any manner to AHE's and/or AHRNG's performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or EGLE, AHE and/or AHRNG shall, within a reasonable period of time, provide copies of any documents, records, or other information required to be maintained under this Paragraph.

68. At the conclusion of the information-retention period provided in the preceding Paragraph, AHE or AHRNG shall notify the United States and EGLE in writing at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or EGLE, AHE or AHRNG shall deliver any such documents, records, or other information to EPA or EGLE. AHE or AHRNG may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If AHE or AHRNG asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by AHE or AHRNG. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

69. AHE and/or AHRNG may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R.

Part 2. As to any information that AHE and/or AHRNG seek(s) to protect as CBI, AHE and/or AHRNG shall follow the procedures set forth in 40 C.F.R. Part 2.

70. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or EGLE pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of AHE and/or AHRNG to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

71. This Consent Decree resolves the civil claims of the United States and EGLE for the violations alleged in the Complaint filed in this action through the date of lodging.

72. The United States and EGLE reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or EGLE to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 71. The United States and EGLE further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the AHE Facility, whether related to the violations addressed in this Consent Decree or otherwise.

73. In any subsequent administrative or judicial proceeding initiated by the United States or EGLE for injunctive relief, civil penalties, other appropriate relief relating to the AHE Facility or AHE's alleged violations, AHE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims

raised by the United States or EGLE in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 71.

74. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. AHE and AHRNG are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and AHE's and AHRNG's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and EGLE do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that AHE's or AHRNG's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

75. This Consent Decree does not limit or affect the rights of AHE, AHRNG or of the United States or EGLE against any third parties, not a party to this Consent Decree, nor does it limit the rights of third parties, not a party to this Consent Decree, against AHE or AHRNG, except as otherwise provided by law.

76. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XIII. COSTS

77. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and EGLE shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by AHE and/or AHRNG.

XIV. NOTICES

78. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email, with a preference for email, addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-12226

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-12226

As to EPA by email: R5ardreporting@epa.gov
mei.vicky@epa.gov
heins.daniel@epa.gov
daugavietis.andre@epa.gov

As to the Michigan Department
of the Attorney General by email: gordonn1@michigan.gov

As to the Michigan Department
of the Attorney General by mail: Michigan Department of the Attorney General
Environment, Natural Resources and
Agriculture Division
Air and Water Section
P.O. 30755
Lansing, Michigan 49809

As to EGLE by email: millers@michigan.gov

As to EGLE by mail:

Attn: Jackson District Supervisor
EGLE, AQD, Jackson District
301 E. Louis Glick Hwy
Jackson, Michigan 49201

Attn: Enforcement Unit Supervisor
EGLE, AQD
P.O. Box 30260
Lansing, Michigan 48909-7760

As to Arbor Hills Energy LLC
by mail:

Arbor Hills Energy LLC
One North Lexington Avenue
Suite 1450
White Plains, New York 10601
Attn: Office of General Counsel

As to Arbor Hills Energy by email: noticeofficer@fortistar.com

As to Arbor Hills RNG, LLC: One North Lexington Avenue
Suite 1450
White Plains, New York 10601
Attn: Office of General Counsel

79. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

80. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

81. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

82. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

83. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

84. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 63, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

85. After AHE and AHRNG have completed the requirements of Section VI (Compliance Requirements), have thereafter maintained continuous compliance with this Consent Decree for a period of three years, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, AHE and/or AHRNG may serve upon the United States and EGLE a Request for Termination, stating that AHE and AHRNG have satisfied those requirements, together with all necessary supporting documentation.

86. Following receipt by the United States and EGLE of AHE's and/or AHRNG's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether AHE and AHRNG have satisfactorily

complied with the requirements for termination of this Consent Decree. If the United States, after consultation with EGLE, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

87. If the United States after consultation with EGLE does not agree that the Decree may be terminated, AHE and/or AHRNG may invoke Dispute Resolution under Section X. However, AHE and/or AHRNG shall not seek Dispute Resolution of any dispute regarding termination until 120 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

88. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent for entry of the Consent Decree if the comments regarding the Consent Decree disclose facts or considerations with regard to the AHE Facility and/or the RNG Facility which indicate that the Consent Decree is inappropriate, improper, or inadequate. AHE and AHRNG consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified AHE and AHRNG in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

89. Each undersigned representative of AHE, AHRNG and EGLE certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document. The Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice, identified on the DOJ signature page below, is fully authorized to enter into the terms and

conditions of this Consent Decree and to legally bind the United States to this document, and the undersigned counsel is authorized to execute this agreement.

90. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. AHE and AHRNG agree to accept service of process by email with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. AHE and AHRNG need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

91. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXII. FINAL JUDGMENT

92. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, EGLE, and AHE.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

93. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of Section III (Applicability), Paragraph 5; Section VI (Compliance Requirements), Paragraphs 19-24 and 30; Section VII (Reporting Requirements), Paragraphs 32-33; and Section XI (Information Collection and Retention), Paragraphs 65-67, is restitution or required to come into compliance with law.


Dated and entered this __ day of _____, 2021

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

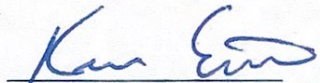
TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
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Date 9/9/2021


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Date 9/7/2021


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FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date 8/26/2021

T. Leverett Nelson
Digitally signed by T.
Leverett Nelson
Date: 2021.08.26
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T. LEVERETT NELSON
Regional Counsel
U.S. Environmental Protection Agency, Region 5

Date 8/26/2021

ERIK OLSON
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ANDRE DAUGAVIETIS
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FOR THE MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY:

Date 8-24-21



LIESL EICHLER CLARK

Director

Michigan Department of Environment, Great Lakes, and
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Date 8/24/2021



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FOR ARBOR HILLS RNG LLC:

8/20/2021
Date



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