

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Salisbury AD 1, LLC for a certificate	)	Docket No. 18-3449-PET
of public good, pursuant to 30 V.S.A. § 231, to	)	
own and operate a renewable natural gas facility	)	
in Salisbury, Vermont, and for de minimis	)	
regulation, and to address motions to transfer and	)	
amend the 30 V.S.A. § 248 CPG for the facility	)	
that was issued in Case 8596.	)	

**COMMENTS OF THE AGENCY OF NATURAL RESOURCES ON SALISBURY
AD 1, LLC MOTION TO TRANSFER AND AMEND CPG**

The Vermont Agency of Natural Resources (Agency), by and through undersigned counsel, submits the following comments in response to the Public Utility Commission’s (Commission) procedural order of October 11, 2018. The Commission’s order requests comments on the October 4, 2018 motion of Salisbury AD 1, LLC (Salisbury) to transfer the Section 248 certificate of public good (CPG) issued to Lincoln Renewable Gas, LLC in Docket No. 8596 (Project) to Salisbury, motion to amend the CPG (Amended Project), and petition under 30 V.S.A. § 231 for a CPG for Salisbury to own and operate a renewable natural gas facility and for de minimis regulation.¹

The Agency’s comments relate to Salisbury’s motion to amend the CPG. The Agency concludes that Salisbury’s proposed modifications to the Project constitute a substantial change under Commission Rule 5.408 in that the Amended Project raises a significant issue with respect to 30 V.S.A. § 248(b)(5) concerning impacts to the natural environment as well as 30 V.S.A. § 248(a) concerning the general good of the state. The Agency recommends that the following criteria, which are encompassed by Section

¹ The comment deadline established in the October 11 order was extended to October 31, 2018 by the commission’s procedural order dated October 23, 2018.

248(b)(5) and by necessity factor into a Section 248(a) general good analysis, be subject to a substantive issue review that begins with a status conference to set a schedule to include supplemental prefiled testimony by Salisbury, discovery, non-petitioner prefiled testimony, rebuttal and surrebuttal prefiled testimony, and an evidentiary hearing.

Water Pollution (Soil Health and Water Quality)

The Amended Project will be located within the Otter Creek watershed. Otter Creek is a tributary to Lake Champlain. Otter Creek, downstream of the Project, is on the 2016 Stressed Waters List (pollutants: turbidity, nutrients, and sediment) and the 2018 Priority Surface Waters List – Part D (impaired with approved TMDL for E. Coli). Lake Champlain (Otter Creek Section) is on the 2018 Priority Surface Waters List – Part D (impaired with approved TMDL for Phosphorus). The pollution budget (TMDL) established for the Lake under the federal Clean Water Act establishes a 40% phosphorus reduction requirement from agricultural loading. Achieving this reduction will require substantial changes in agricultural management, especially those related to manure and nutrient management. The Amended Project has the potential to raise phosphorus levels in soil at the host farm to a level which risks the introduction of excess phosphorus, through erosion, into Otter Creek and the Lake. This would negatively impact water quality and could affect the state's ability to achieve the phosphorus reductions required by the TMDL.

The importation of additional nutrients in the form of food waste as feedstock for the Amended Project appears to result in the host farm exceeding the allowances of its nutrient management plan and would require the Amended Project to export phosphorus that cannot be applied to the fields. This dilemma is corroborated by the information

contained in Exhibit SAD1-7. However, the Amended Project has not demonstrated how it will manage and monitor levels of phosphorus at the host farm, not established how it will successfully extract excess phosphorus from the digestate, and has not identified an outlet for managing and exporting the excess phosphorus. The Agency's experience has been that identifying a market and establishing the ability to export extracted phosphorus has proven challenging.

Given these factors, as well as those discussed below under public health and safety, the increases in both nutrient input and output by the Amended Project has the potential for significant impacts with respect to Section 248(b)(5), water pollution (soil health and water quality).

Air Pollution

The Amended Project includes the addition of a backup diesel generator. Anticipated use and emissions associated with this new component are not sufficiently explained. In order to evaluate the Amended Project and establish that air pollution impacts will not exceed an acceptable level, additional information explaining under what conditions or circumstances the backup generator will need to be utilized, how many hours per year of use are expected, and what Tier of emission levels (40 CFR Part 89 and 1039) it will be certified to meet is needed at this time. In addition, specifications for the gen-set to be utilized for the combined heat and power component of the project would be useful for the same purposes.

While it is understood that the Amended Project will ultimately need to obtain a Construction and Operating Permit from the VT DEC Air Quality and Climate Division, the additional information noted above is needed at this time for the Agency to conclude

that the Amended Project does not raises a significant issue with respect to air pollution with the condition that ultimately the Amended Project will be required to obtain the referenced air permit prior to any site preparation or construction. Thus, the proposal presently has the potential for significant impacts with respect to Section 248(b)(5), air pollution.

Waste Management

The Amended Project proposes to substantially increase the volume of pre-processed food waste (including high strength wastes) utilized as feedstock for the digester. Volume of food waste feedstock is anticipated to be 65,000 tons per year, a figure which constitutes approximately two-thirds of the overall feedstock.

Food waste will be delivered by trucks. The Amended Project proposal lacks sufficient information to identify and assess appropriate and necessary waste management measures, with regard to both project design and operations. For example, will a tipping floor be needed? A tipping floor would entail the need for leachate collection and the management of leachate. Will food waste arrive in a slurry form or will it need to be processed into a slurry on site? Will de-packaging equipment be needed? In addition, prevention and containment of food waste spills both during and after delivery is not addressed in the Amended Project's proposal. Without identified structural and operational containment measures there is no way for the Agency to determine that risks of releases into sensitive receptors (e.g., wetlands, streams, etc.) are reduced to an acceptable level.

While it is understood that the Amended Project will ultimately need to obtain a Solid Waste Facility Permit from the VT DEC Waste Management and Prevention

Division, the additional information noted above is needed at this time for the Agency to conclude that the Amended Project does not raises a significant issue with respect to waste management with the condition that ultimately the Amended Project will be required to obtain the referenced solid waste permit prior to any site preparation or construction. Thus, the proposal presently has the potential for significant impacts with respect to Section 248(b)(5), waste management.

Public Health and Safety

The Amended Project proposes to construct a nutrient liquid storage tank designed to hold 5.3 million gallons of digestate at any given time. The storage tank is located less than 100 feet from a wetland and a tributary to Otter Creek. Salisbury's filing does not include design and operation details which address the management of potential releases of digestate from the storage tank. The conceptual site plan (Exhibit SAD1-3) also indicates that the Amended Project proposes to pump the liquid digestate across the referenced wetland and tributary in order to get the digestate to the storage tank. However, no plans or drawings are provided, and no explanation is presented as to the materials or methods of the pipe's construction or operation. It is also noted that the pipe will need to cross an existing culvert and will be laid under a road that will be subjected to heavy truck traffic. Similarly, plans, drawings and explanations as to construction techniques and safety assurance are not provided.

It is also necessary to ascertain who will be responsible for responding to and containing releases of digestate should they occur, and to identify measures that will be implemented (including but not limited to physical structures, response plans, designated on- or off-site personnel) to prevent, contain or clean up any releases and prevent them

from coming into contact with surface waters. Thus, the proposal presently has the potential for significant impacts with respect to Section 248(b)(5), public health and safety.

Wetlands

As discussed above, components of the Amended Project which will receive, transport or contain waste (feedstock or digestate) are located in close proximity to wetlands. However, there are a lack of details concerning prevention of waste from entering wetlands as discussed above. The conceptual site plan (Exhibit SAD1-3) reveals that the Amended Project proposes disturbance within wetlands and / or wetland buffers. However, the amount of disturbance is not quantified and the way in which the wetlands or buffers will be disturbed and otherwise impacted by the construction and operation of the Amended Project's infrastructure (e.g., piping, stormwater structures, etc.) is not described or explained.

While it is understood that the Amended Project will ultimately need to obtain a Wetland Permit from the VT DEC Watershed Management Division, the additional information noted above is needed at this time for the Agency to conclude that the Amended Project does not raises a significant issue with respect to wetlands with the condition that ultimately the Amended Project will be required to obtain the referenced wetland permit prior to any site preparation or construction. Thus, the proposal presently has the potential for significant impacts with respect to Section 248(b)(5), wetlands.

Streams

As previously noted, components of the Amended Project which will receive, transport or contain waste (feedstock or digestate) are located in close proximity to,

including the crossing of, a tributary to Otter Creek. However, there are a lack of details concerning prevention of waste from entering surface waters as discussed above. The conceptual site plan (Exhibit SAD1-3) reveals that the Amended Project will disturb a stream where the digestate pipe crosses stream 2018-SC-2 (also discussed in the public health and safety section above). However, no plans or drawings are provided, and no explanation is presented as to the materials or methods of this pipe's construction or operation.

The Amended Project presently has the potential for significant impacts with respect to Section 248(b)(5), streams.

Water Pollution (Stormwater)

The documents submitted with Salisbury's motion to amend the CPG confirm that the Amended Project will require both a construction stormwater permit and an operational stormwater permit. The filing acknowledges that impervious surfaces will exceed the one-acre threshold. However, the conceptual site plan (Exhibit SAD1-3) lacks the following details which are necessary to evaluate the impacts of the Amended Project: actual extent of soil disturbance, actual grading contours, actual operational stormwater features (such as detention ponds and conveyance channels) including actual size, shape, location and design type (e.g., extended detention basin with forebay, infiltration basin, grass lined swale or channel, rock lined swale or channel, etc.), and the location, extent and types of impervious surfaces.

While it is understood that the Amended Project will ultimately need to obtain both construction and operation stormwater permits from the VT DEC Watershed Management Division, the additional information noted above is needed at this time for

the Agency to conclude that the Amended Project does not raises a significant issue with respect to stormwater with the condition that ultimately the Amended Project will be required to obtain the referenced stormwater permits prior to any site preparation or construction. Thus, the proposal presently has the potential for significant impacts with respect to Section 248(b)(5), stormwater.

General Good of the State

Impacts, even if less than undue, under each of the Section (b)(5) criteria identified above are, by necessity, considered by the Commission in weighing the burdens against the benefits of a project to reach a determination as to whether a project promotes the overall good of the state. The location of the Project within the Otter Creek watershed and the Lake Champlain basin makes it imperative that all benefits are weighed against the burdens placed on water quality, especially nutrient loads attributed to phosphorus. As discussed from the outset in the water pollution section above, the Amended Project will, through importation of feedstock, increase nutrient outputs to the point where the resulting level of phosphorus cannot be accommodated by the host farm. For the reasons discussed above the Amended Project raises a significant issue as to whether it promotes the general good of the state.

Conclusion

For the reasons set forth above, the Agency recommends that the Amended Project be subject to a substantive issue review that begins with a status conference to set a schedule to include supplemental prefiled testimony by Salisbury, discovery, non-petitioner prefiled testimony, rebuttal and surrebuttal prefiled testimony, and an evidentiary hearing. The Agency also wishes to inform the Commission at this time that

it is actively engaged in a dialogue with Salisbury concerning these issues. An objective of that dialogue is to provide the parties with an opportunity to commence work on these issues in advance of the adoption of a formal schedule in this matter with the goal of making the formal 248 process as efficient as possible.

Dated Wednesday, October 31, 2018, at Montpelier, Vermont

Respectfully submitted,

State of Vermont
Agency of Natural Resources



By: _____

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