

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Salisbury AD 1, LLC for a Certificate	)	
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	)	Case No. 18-3449-PET
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	)	

**Stipulation between Salisbury AD 1, LLC,
the Vermont Agency of Natural Resources, and
the Vermont Agency of Agriculture, Food & Markets**

This Stipulation (the “Stipulation”), dated as of the 8th day of February, 2019, sets forth the terms of the agreement reached by Salisbury AD 1, LLC (“Petitioner” or “SAD1”), a limited liability company, the Vermont Agency of Natural Resources (“ANR”), and the Vermont Agency of Agriculture, Food & Markets (“AAFM”), collectively, the “Stipulating Parties,” in connection with the above-captioned docket.

WHEREAS, this docket concerns a Petition for an Amended Certificate of Public Good (“CPG”) pursuant to 30 V.S.A. § 248(j) to own and operate a renewable natural gas facility in Salisbury, Vermont (“the Project”) filed with the Vermont Public Utility Commission (“Commission”) on October 4, 2018, and supplemented in the Petitioner’s filings to the Commission dated December 12, 2019 and February 6, 2019; and

WHEREAS, the Stipulating Parties have engaged in discussions concerning the revised Project, as well as in formal and informal discovery; and

WHEREAS, the Parties acknowledge that ancillary permits, including a Large Farm Operations (LFO) Permit amendment issued by AAFM to the Goodrich Farm, and other permits issued by ANR to SAD1, require separate application processes as to which no outcome is predetermined; and

WHEREAS, the Parties understand that it typically takes several months from the initial submission of LFO permit application materials to arrive at a permit application that is deemed complete by AAFM, after which a public information meeting must be held, and AAFM has 45 business days to approve, condition, or disapprove the permit application; and

WHEREAS, SAD1 has informed AAFM through discovery that the Goodrich Farm has committed to starting the LFO permit application process shortly after a CPG amendment is issued in this proceeding and construction of the Project has begun;

WHEREAS, SAD1 represented in discovery that it anticipates digestate production will not begin until April 2020, with steady state digestate production volumes not reached until September 2020; and

WHEREAS, the Parties understand that any delay in submission of a complete LFO permit amendment application could impact the Project's ability to operate in SAD1's desired timeframe; and

WHEREAS, the Stipulating Parties, having had an opportunity to review and assess the Petition and discovery responses provided by Petitioner, have resolved all outstanding issues between them related to the Project, and have agreed that the conditions set forth in this Stipulation should be included in any CPG issued by the Commission.

THEREFORE, in consideration of the above and the undertakings and covenants set forth below, the Stipulating Parties hereby agree as follows:

- I. The Stipulating Parties agree that the following conditions shall be included in any CPG issued by the Commission in this matter, and that the terms and conditions of this Stipulation shall supersede any inconsistent prefiled affidavits and exhibits:
 1. Construction, operation, and maintenance of the Project shall be in accordance with all required permits, approvals, and other applicable regulations, including but not limited to those of the Vermont Agency of Natural Resources ("ANR").
 2. Prior to commencing construction of the Project, SAD1 shall file with the Commission and the parties a letter stating that it has fulfilled all pre-construction CPG conditions, and that it intends to commence construction of the Project.
 3. Prior to commencing "Digester operations" of the Project,¹ SAD1 shall file with the Commission and the parties a letter confirming that it has fulfilled all pre-operation CPG conditions (other than those related to the gas pipeline, which are separately addressed in this CPG), and that it intends to commence operation of the Project.
 4. Prior to commencing site preparation or construction of the Project, SAD1 shall obtain the following permits or approvals from ANR:
 - a. Solid Waste Certification from the VT DEC Waste Management and Prevention Division.
 - b. Construction and Operating Permit from the VT DEC Air Quality and Climate Division.
 - c. Individual Construction Permit (INDC) from the VT DEC Watershed Management Division authorizing stormwater discharges associated with Project construction activities.

¹ For purposes of this CPG, commencing "Digester operations" shall mean the start of filling the Project's digesters with manure, food residuals, or any other feedstock. "Commissioning" or "commencement of commercial operation" shall mean the date upon which renewable natural gas flows from the Project to the Vermont Gas distribution system for sale.

- d. Operational Stormwater Discharge Permit or General Permit authorization from the VT DEC Watershed Management Division authorizing stormwater discharges associated with the Project infrastructure.
 - e. Wetland Permit from the VT DEC Watershed Management Division.
 - f. Amended VT DEC Wastewater System and Potable Water Supply Permit #WW-9-1927.
5. Prior to commencement of Digester operations, SAD1 shall obtain, in addition to the above referenced stormwater discharge permits (4.c. and 4.d.), authorization under the Multi-Sector Stormwater General Permit, or any other permit, if determined to be applicable by the VT DEC Watershed Management Division for the purpose of regulating discharges associated with the Project.
6. Prior to commencing site preparation or construction, SAD1 shall demarcate all wetlands and their buffers at the Project site with visible flagging and instruct all work crews to avoid those areas except as authorized by a Wetland Permit.
7. No later than six months in advance of the Project's decommissioning, SAD1 shall complete and provide to the VT DEC Wetlands Program an updated wetlands assessment to determine if any of the Project infrastructure is located within any Class II wetlands or their 50-foot buffers.
8. If, at the time of decommissioning, any Project infrastructure is determined to be located within a Class II wetland or its 50-foot buffer zone, then the CPG Holder shall obtain from the VT DEC Wetlands Program a jurisdictional determination as to whether the decommissioning activities require a Vermont Wetland Permit, in which case the CPG Holder shall obtain such permit prior to performing any decommissioning activities and shall comply with its terms and conditions. If, at the time of decommissioning, any Project infrastructure is determined to be located within a Class II wetland or its 50-foot buffer zone and a Vermont Wetland Permit is not required, the CPG Holder shall, sufficiently in advance of decommissioning, submit a wetlands restoration plan to the DEC Wetlands Program for review and approval as an allowed use under the Vermont Wetland Rules (see Section 6.23 of the Vermont Wetland Rules). The restoration plan shall address the removal of Project infrastructure located in any wetland and shall, at a minimum, contain the following elements:
- i. Identification of phasing and staging areas;
 - ii. Utilization of methods that prevent rutting in the wetland, including removal of structures during frozen or dry conditions, or use of construction mats or similar techniques to minimize soil disturbance;
 - iii. Revegetation of all disturbed areas within the wetland and buffer zone with appropriate conservation seed mix(es); and

- iv. Provisions for inspection by ANR prior to and following site restoration.
9. If any Project infrastructure is located within a Class II wetland or its 50-foot buffer zone at the time of decommissioning, then decommissioning of the Project shall not take place until ANR has issued a Vermont Wetland Permit or has approved the wetlands restoration plan as an allowed use under the Vermont Wetland Rules, whichever is applicable.
 10. All blasting associated with the Project shall be performed in accordance with a blasting plan prepared by a licensed blasting contractor. The blasting plan shall conform to ANR's *Blasting Plan Guidance Document* (June 2017) and incorporate ANR's *Best Management Practices for Blasting to Avoid Environmental Contamination* (December 2016). If Project blasting will involve more than 5,000 cubic yards of bedrock, SAD1 shall submit to ANR, for review and approval, a Groundwater Monitoring Plan for Blasting Activities. No blasting shall take place until such groundwater monitoring plan, if applicable, is approved by ANR.
 11. In the event SAD1 receives feedstock in the form of "food processing residuals" (i.e. non-sewage wastewater that requires a Vermont Indirect Discharge Permit), SAD1 may only receive such residuals if the facility has an Indirect Discharge Permit from the VT DEC Drinking Water and Groundwater Protection Division. All food residuals will be accepted and managed by SAD1 in accordance with the Project's Solid Waste Certification.
 12. SAD1 shall manage the buried debris (e.g., brick, concrete, wood, asphalt, etc.) encountered during geotechnical explorations in the area where the Project's anaerobic digesters are to be located, and all other buried debris encountered during Project construction, in accordance with the following.
 - a. SAD1 shall remove and dispose of all such debris at a facility which has a solid waste certification and is authorized to accept such waste; or
 - b. SAD1 shall obtain from the VT DEC Waste Management and Prevention Division, and comply with, an Insignificant Waste Management Event Approval.
 13. The Project's two effluent storage tanks shall be designed and constructed to comply with the National Natural Resources Conservation Service (NRCS) 313 Code standard including but not limited to NRCS-NEM, Part 536, Structural Engineering. The "for construction" drawings for the effluent storage tanks shall be stamped by a Vermont licensed professional engineer, filed with the Commission, and provided to the parties at least 30 days prior to construction of the tanks. A flow meter shall be installed in the outlet of each tank to allow for remote monitoring of the amount of liquid leaving the tank. By February 15 of each year, SAD1 shall report to the Vermont Agency of Agriculture, Food and Markets ("AAFM") the volume of liquids removed from the tank, broken down on a monthly basis.
 14. SAD1 shall keep its Spill Prevention and Control Plan (Exhibit SAD1-12) updated (i.e., contact information, etc.) and shall keep a copy of the updated plan at the Project site. SAD1 shall regularly brief all on-site employees and all suppliers and contractors who regularly access the Project site on the plan's purpose and contents.

15. Prior to commencing Digester operations, SAD1 shall enter into an agreement with one or more spill response and cleanup contractors. The contractor(s) shall have the equipment and personnel necessary for responding to spills which are beyond the capacity of SAD1's on-site personnel to contain or cleanup. SAD1's Spill Prevention and Control Plan shall identify and provide the contact information for the cleanup contractor(s).
16. SAD1 shall secure the outlet valves of the effluent storage tanks with physical locks and shall limit access to the lock key to only SAD1 and farm personnel who have adequate training and experience to utilize the outlet valves.
17. Prior to supplying the Goodrich Farm, or any other receiving farm(s), with effluent or nutrient cake produced by the Project,² SAD1 shall obtain written verification (which may include e-mail) from the receiving farm(s) that it has: (i) a Nutrient Management Plan (NMP) prepared by a Technical Service Provider (TSP) registered with NRCS (or AAFM once AAFM's TSP certification program is established) that complies with the Required Agricultural Practices (RAPs) for all effluent and nutrient cakes to be exported from the Project onto the receiving farm(s); and (ii) any applicable farm operational permit or certification (e.g. LFO Permit, Medium Farm Operations (MFO) General Permit, Certified Small Farm Operations (CSFO) Certification, or an individual permit) that permits the proposed import of effluent and nutrient cakes from the Project. The written verification(s) shall be sent to AAFM and ANR upon receipt.
18. SAD1 shall not commence Digester operations until AAFM has issued any amendment(s) to the Goodrich Farm's LFO Permit that AAFM deems necessary under Title 6 of the Vermont Statutes Annotated relative to the interface between the Goodrich Farm and the Project, and SAD1 has provided ANR with a copy of the amended LFO Permit and associated NMP. Thereafter during all years of Project operation, copies of a current LFO Permit and NMP shall be provided annually to ANR by SAD1 within 45 days of SAD1's receipt of the updated LFO Permit and NMP.
19. SAD1 shall submit records to AAFM and ANR by February 15th each year indicating the total gallons and nutrient content of liquid effluent exported to any receiving farm or other entity in the previous calendar year, broken out on a monthly basis, and specifying the number of gallons per farm or other entity. Nutrient content will be calculated based on an average of the sampling results per the LFO Permit and NMP requirements, and as outlined in Exhibits SAD1-7 and SAD1-22.
20. SAD1 shall submit records to AAFM and ANR by February 15th each year indicating the total tons and nutrient content of nutrient cake exported to any receiving farm, specifying the number of tons per receiving farm, and all other information specified in Exhibit SAD1-

² For the purposes of this CPG, the term "receiving farm" means any farm that will receive nutrient cakes or effluent from the Project, including but not limited to the Goodrich Farm.

22 (page 7). Nutrient content will be assessed based on an average of the results of the quarterly tests.

21. Each year during Project operation, SAD1 shall by February 15th or two weeks after issuance of any applicable NMP, whichever occurs later, obtain written verification (which may include e-mail) from the receiving farm(s) that all liquid effluent and nutrient cake from the Project to be received that year will be stored and applied in accordance with all agricultural water quality regulations including any necessary permits and NMP(s), and shall by February 15th obtain written verification that all liquid effluent and nutrient cake from the Project received the prior year was stored and applied in accordance with all agricultural water quality regulations including any necessary permits and adequate NMPs. The written verifications shall be sent to AAFM and ANR within 30 days.
22. SAD1 shall retain its own TSP, who shall be registered with NRCS and AAFM (beginning once the State TSP certification program is in effect), during the life of the Project. SAD1's TSP will coordinate and oversee the sampling of the incoming feedstocks, output of the digester, and output from the nutrient recovery system (liquid effluent and nutrient cake); assist in determining the phosphorus mass balance with respect to any receiving farms; and otherwise follow SAD1's Digestate Management Plan (Exhibit SAD1-22). SAD1's TSP will also coordinate the digestate recipe and sampling with the receiving farm's TSP and NMP to optimize phosphorus removal. SAD1 shall provide ANR and AAFM with the name and contact information of the TSP and shall make the TSP available to ANR and AAFM for the purpose of the Project's implementation and compliance with all CPG conditions.
23. With respect to the sampling referenced in the prior Condition above, SAD1 will sample all of the following parameters: P₂O₅; Total Nitrogen (TN); Available Nitrogen; Organic Nitrogen; Ammonium N; and K₂O, all in the respective forms of lbs./1000 gallons (if liquid) and lbs./tons (if solid).
24. Within 180 days of issuance of this CPG, SAD1 shall provide the Commission and the parties with a written update on SAD1's efforts to identify a market to export nutrient cakes for commercial use. In the event SAD1 has secured markets for the nutrient cakes, it shall submit a nutrient cake export plan to ANR for review and approval, which shall not be unreasonably withheld. In the event SAD1 has not submitted such a plan by the commencement of commercial operations, it shall provide additional updates every 180 days thereafter unless and until it submits a plan for approval.
25. Until such time as SAD1 develops, and submits to ANR for review and approval, a nutrient cake export plan, and obtains ANR's approval, SAD1 shall contract with a registered waste hauler to transport all nutrient cake not provided to the Goodrich Farm or any other receiving farm, to a certified solid waste facility which is authorized to accept such waste. SAD1 shall contract with the hauler(s) prior to commencement of Digester operations. All nutrient cakes shall be transported to the waste facilities in a manner that prevents their release into the environment (e.g., sealed roll-off container secured by a tarp on top).

26. In the event that SAD1 is formally notified by a receiving farm or AAFM that some or all of the liquid effluent or nutrient cake intended to be transferred from the Project cannot be land-applied or stored by the receiving farm in accordance with RAPs and the applicable NMP and LFO Permit (or MFO General Permit, CSFO Permit, or individual permit), SAD1 shall either: (i) transfer such excess liquid effluent or nutrient cake to a different receiving farm that can meet all applicable water quality regulations and permit/certification requirements or another entity that is certified to take the liquid effluent or nutrient cake, such as a wastewater treatment facility or landfill; or (ii) temporarily slow down or stop digestate production. SAD1 shall continue to take such action(s) until RAPs and the applicable NMP and LFO permit (or MFO General Permit, CSFO Permit, or individual permit) can be complied with to avoid water pollution from excess nutrient loading.
 27. All nutrient cakes will be stored in the nutrient management building or in on-site covered dumpsters prior to being exported from the Project area.
 28. Any nutrient cakes produced by the Project, and the liquid effluent in the nutrient storage tanks, must be sampled after any significant adjustments to the Project's inputs have been made. All sample results need to be included and used as part of the next recommendation of the nutrient application in any receiving farm's NMP.
 29. SAD1 shall allow ANR and AAFM, through their authorized representatives, to enter upon and inspect the Project's infrastructure, equipment, and operations upon reasonable notice, in a reasonable manner, and at reasonable times during ordinary business hours to determine compliance with the above conditions. This right of entry and inspection includes the right to collect samples of the Project's feedstock, digestate (liquid and solid), and discharges, and the right to have access to and copy any non-proprietary records required to be kept pursuant to the above conditions.
- II. The Stipulating Parties agree that, subject to compliance with the above conditions, the Project will avoid an undue adverse effect under section 248(b)(5) on air and water purity, the natural environment and the use of natural resources, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and greenhouse gas impacts.
 - III. The Stipulating Parties agree that the Commission may approve the Project and issue an Order and CPG in this matter in accordance with the plans and specifications submitted with the Petition, as modified by any supplemental affidavits and exhibits that are specified in this Stipulation, and including the terms and conditions of this Stipulation. The Stipulating Parties agree that to the extent any affidavits or evidence submitted in this proceeding differs from the provisions of this Stipulation, the provisions of the Stipulation shall control.
 - IV. This Stipulation may be modified only upon mutual written agreement by the Stipulating Parties, and is subject to any necessary Commission approvals.
 - V. The Stipulating Parties agree that this Stipulation shall not be construed by any party or

tribunal as having precedential impact on any future proceeding involving the Stipulating Parties, except as necessary to implement this Stipulation or to enforce an order of the Commission resulting from this Stipulation.

- VI. The Stipulating Parties agree that, should the Commission fail to approve this Stipulation in all material aspects, the Stipulating Parties' agreements set forth herein shall terminate and the Stipulating Parties shall have the right to submit filings in this docket and the Stipulating Parties' agreements in this Stipulation shall not be construed by any party or tribunal as having precedential impact on any testimony or positions that may be advanced in these proceedings.
- VII. Any disputes arising under this Stipulation shall be resolved by the Commission under Vermont law.
- VIII. The Stipulating Parties hereby waive their rights under 3 V.S.A. § 811 to review and comment upon a Proposal for Decision, and to present oral argument thereon, provided that the Proposal for Decision is consistent in all material respects with this Stipulation.

AGENCY OF NATURAL RESOURCES

By: 

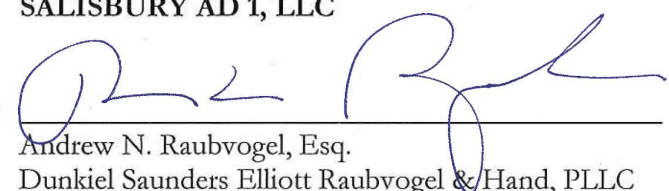
Donald J. Einhorn, Esq.
Counsel for the Agency of Natural Resources

**AGENCY OF AGRICULTURE, FOOD &
MARKETS**

By: 

Alison Milbury Stone, Esq.
Assistant Attorney General

SALISBURY AD 1, LLC

By: 

Andrew N. Raubvogel, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
Attorneys for Salisbury AD 1, LLC