

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Vermont Renewable Gas, LLC)
for a certificate of public good, pursuant to)
30 V.S.A. § 248(j), for approval to construct) Case No. 24-2797-PET
and operate a 2.2 MW farm methane)
facility in Lyndon, Vermont)

**THE VERMONT AGENCY OF AGRICULTURE, FOOD
AND MARKETS' COMMENTS**

The Vermont Agency of Agriculture, Food and Markets (AAFM), by and through counsel, provides the following comments in this matter pursuant to 30 V.S.A. § 248(a)(4)(F)(ii).

Primary Agricultural Soils (PAS)

AAFM has reviewed the petition of Vermont Renewable Gas, LLC (the Petitioner) for the construction and operation of the 2.2-MW electric-generation facility in Lyndon, Vermont (the Project). As set forth below, the Project has the potential to impact approximately 40,000 square feet of primary agricultural soils (PAS) within the Project's limit of disturbance, including the grading, stormwater improvements, underground utilities, and paved areas. Prefiled Testimony of Evan Dell'Olio (Dell'Olio pf.) at 21 and Exhibit VRG-ED-8 at Sheet C2.1.

To mitigate impacts on PAS, the Petitioner proposes to preserve PAS by storing the upper layer, approximately one foot, of PAS for restoration at decommissioning. See Exhibit VRG-AS-9 at 4.¹

In its decommissioning plan, the Petitioner states that it will "... restore this

¹ Exhibit VRG-AS-9 is unpaginated. In these comments, AAFM uses the electronic pagination of the exhibit.

site to the greatest extent practicable, to the condition it was in before installation of the Facility. [...] To provide further clarification, all above-grade and below-grade portions of the Facility as well as any improvements *[sic]* installed as part of the project shall be removed from the site.” See Exhibit VRG-AS-9 at 3.

In explaining its estimate of costs, the Petitioner contradicts its assurance that it will remove all below-grade portions of the project; Petitioner states that it will remove the below-ground portions to a depth of four feet, and that this is an industry standard. See Exhibit VRG-AS-9 at 5. AAFM found no evidence in the record that described the industry standard.

The project is novel in AAFM’s experience, and AAFM has some concerns about whether the PAS impacts will be temporary and whether the site will be and/or may be decommissioned without permanent impacts. If the impacts can be appropriately categorized as temporary, we suggest appropriate conditions below. If the true impacts are not temporary, then in lieu of mitigation, we request appropriate offsite mitigation fees to help offset all permanent PAS impacts.

To the extent the impacts are temporary, the Project’s impacts to PAS can be mitigated adequately through the conditions listed below.

Conditions to Mitigate Impacts on Primary Agricultural Soils

AAFM respectfully requests that any CPG issued in this matter include the following conditions, which are intended to ensure *inter alia* that excavated soils are stockpiled during construction, stored appropriately on site, and replaced at

decommissioning; that all infrastructure is removed; and that impacts from soil compaction are minimized:

1. Notwithstanding any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of the electric generation facility shall remain classified as such soils, and the review of any change in use of the site after construction of the facility shall treat the soils as if the facility had never been constructed.
2. For areas of soil disturbance of primary agricultural soils (“PAS”) on the Project site, not including driven piles, posts, or fence posts that don’t include the use of concrete or masonry, the CPG Holder shall comply with the AAFM Act 250 Procedure: Reclamation of Vermont Agricultural Soils (rev. Oct.30, 2014) (“AAFM Guidelines”), currently available online at: https://agriculture.vermont.gov/sites/agriculture/files/documents/land_use/ReclamationGuidelinesforAgriculturalSoils_.pdf. The CPG Holder shall also comply with the AAFM Guidelines with respect to sequencing for returning soils at the conclusion of construction or project decommissioning.
3. If installing below-ground infrastructure with imported material of any kind (i.e. fill) in areas of PAS, the CPG Holder shall remove soil in a manner that separates soil horizons, stockpile the layer(s) displaced by the layer of imported material for the life of the Project, and replace the remaining soil horizons in original sequence to fill the trench after installation of the conduit. When decommissioning and removing below-ground infrastructure, the CPG Holder shall excavate and replace soil horizons in the same way, this time removing the conduit and imported material and replacing it with the stockpiled layer(s) that the imported material previously displaced. If no imported material is used for below-ground infrastructure, no soil stockpiling shall be required for the associated excavation as long as the CPG Holder ensures that any PAS removed (during construction and again during decommissioning) is replaced in a manner that retains the integrity of the PAS and the proper sequencing of soil horizons consistent the AAFM Guidelines.

4. To reduce impacts from soil compaction, the CPG Holder shall not use any vehicle or equipment with an axle load (the fraction of gross weight distributed over each axle) of over 12,000 pounds on wet soils at the site. Wet soils exist when the site has seen higher than average rainfall for a trailing 30-day period, based on National Weather Service or similar state or federal rainfall data. This prohibition shall not apply to the use of any on-site gravel roads that are constructed with geotextile fabric, a minimum of 10" of gravel, and a 1" or thicker cap of crushed aggregate. The CPG Holder shall undertake the soil tests and mitigate any material change in soil bulk density as follows: Before construction, for each area of direct impact such as staging areas, access roads, and any area on the Project site where axle loads (the fraction of the gross weight distributed over each axle) of construction vehicles or equipment will exceed 12,000 pounds per vehicle, the CPG Holder will collect two soil samples at least 100 feet apart and test them using the method "Bulk Density Test" described in the Natural Resources Conservation Service "Soil Quality Test Kit Guide." (Currently available online at https://efotg.sc.egov.usda.gov/references/public/WI/Soil_Quality_Test_Kit_Guide.pdf.)
 - b. In any areas of primary agricultural soils on the Project site where axle loads of construction vehicles or equipment will not exceed 12,000 pounds, the CPG Holder shall collect and test one sample for each mapped soil unit before construction and shall otherwise follow the same testing protocols.
 - c. At the end of the decommissioning process, the CPG Holder shall repeat the testing at the same locations tested before construction. If the post-decommissioning soil bulk density for any sample shows an increase in soil bulk density from preconstruction soil bulk density that is greater than 10 percent, then the CPG Holder shall conduct agricultural subsoiling and/or other strategies to decompact soil until soil bulk density is materially the same as it was prior to Project construction.
6. The CPG Holder shall serve test results upon AAFM within 60 days of the test, as follows:
 - a. By email to counsel of record in this matter, as listed in PUC records at the time of service; and
 - b. By email to AGR.Notice@vermont.gov, as may be updated in PUC records at the time of service.

Conclusion

AAFM respectfully requests that the Commission find that the Project will impact approximately 40,000 square feet of primary agricultural soils, and, to the extent that the Commission finds that the PAS impacts are temporary, that the conditions listed above be included in any CPG issued in this case. With these conditions, the Project will not have an undue adverse effect on primary agricultural soils under 30 V.S.A. § 248(b)(5). If the PAS impacts should be categorized as permanent, then AAFM respectfully requests that Petitioner be ordered to pay appropriate fees for offsite mitigation.

Dated at Montpelier, Vermont this 2nd day of July 2024.

By: /s/ WillyJane Patry
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