

STATE OF NORTH CAROLINA
COUNTY OF RICHMOND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 EHR 00866

Clean Air Carolina,)
Petitioner,)
)
v.)
)
North Carolina Department of Environmental)
Quality, Division of Air Quality,)
Respondent,)
)
Enviva Pellets Hamlet, LLC,)
Respondent-Intervenor.)
)
_____)

SETTLEMENT AGREEMENT

The North Carolina Department of Environmental Quality (“DEQ”), Division of Air Quality (“DAQ” or the “Division”), Petitioner Clean Air Carolina, (“CAC”), and Respondent-Intervenor Enviva Pellets Hamlet, LLC (“Enviva”) enter into this Settlement Agreement (“Agreement”) to resolve matters in controversy between them fully and finally. DAQ, CAC, and Enviva shall be referred to collectively herein as the “Parties.”

The Parties hereby stipulate that:

1. On January 14, 2019, DAQ issued Permit No. 10365R03 (“Permit R03”) to Enviva.
2. In its Petition for Contested Case Hearing, Docket No. 19 EHR 00866 (“Petition”), Petitioner alleges that DAQ violated the North Carolina Air Pollution Control Act, the federal Clean Air Act, implementing regulations, and other applicable law and standards by, *inter alia*:
(i) improperly classifying Enviva’s proposed wood pellet manufacturing facility in Hamlet, North Carolina (the “Facility”) as a minor source of air pollution and therefore failing to require the Facility to obtain a major source construction permit under North Carolina’s Prevention of Significant Deterioration (“PSD”) Program; (ii) failing to incorporate enforceable permit conditions sufficient to limit the Facility’s potential to emit below certain thresholds; (iii)

arbitrarily relying on emission estimates in the air permit application; and (iv) failing to provide a reasoned response to public comments.

3. DEQ and Enviva filed prehearing statements and denied all material allegations of the same.

4. The Parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.

5. Following settlement discussions, the Parties have agreed to settle this contested case on the terms set out herein to avoid the expense and burden of further litigation.

6. Without making any admission of liability, violation, or wrongdoing, while expressly denying the same, and in the interest of resolving the contested case, Enviva agrees that it shall:

a. Within thirty (30) days after execution of this Agreement by all Parties, submit an application for modification of Permit R03 to include an express 85% limit on throughput on the dry hammermills at the Facility as was contemplated by the Permit R03 application. The application shall request the following permit conditions:

- i. The Permittee shall monitor and record the total dry hammermill throughput, in terms of oven dried tons, on a monthly and 12-month rolling basis;
- ii. The total dry hammermill throughput, in oven dried tons, shall not exceed 85% of the total facility-wide wood pellet production on a 12-month rolling basis, rolled monthly.
- iii. Modification of Condition 2.2(A)(2)(j) of Permit R03, which governs the required semi-annual summary report, to explicitly provide that in addition to other information already identified in that permit condition, the semi-annual summary report must include the facility's monthly and 12-month

rolling total dry hammermill throughput (as required to be monitored in (i), above); monthly and 12-month rolling total facility-wide throughput (as required to be monitored by Condition 2.2(A)(2)(h) of Permit R03), and monthly hardwood/softwood mix (as required to be monitored by Condition 2.2(A)(2)(h) of Permit R03).

b. Enviva shall provide CAC with an electronic copy of each semi-annual summary report (as referred to in Paragraph 6(a)(iii)) within ten (10) days of filing such report with the Division, for a period of three (3) years from the date of execution of this Agreement.

c. Enviva shall use commercially reasonable efforts to, within one-hundred-twenty (120) days of execution of this Agreement by all Parties, submit an application for the installation of additional control technology or an equivalent engineering alternative, as set out below, to control volatile organic compound (“VOC”) emissions from the Facility’s dry hammermills. In any event, Enviva shall submit such application within one-hundred-eighty (180) days of execution of this Agreement by all Parties. The selected control technology or engineering alternative shall consist of exhausting 100% of the dry hammermill emissions to one or a combination of the following options:

- i. To a dedicated regenerative thermal or catalytic oxidizer (“RTO” or “RCO”) on the dry hammermills;
- ii. To the pellet cooler RCO (“CD-RCO” under Permit R03), to the dryer furnace, or to the wood dryer RTO (“CD-RTO-1” under Permit R03).

d. The application shall further request the incorporation of the following permit conditions for whichever RTO/RCO the dry hammermill exhaust will be routed through:

- i. The Permittee shall operate the [RTO/RCO] during all periods in which any of the dry hammermill lines (“ES-HM-1” through “ES-HM-8” under Permit R03) are in operation.
- ii. Until the first VOC performance testing following utilization of an [RTO/RCO] to control VOC emissions from the dry hammermills, the Permittee shall operate the [RTO/RCO] at or above the temperature recommended by the manufacturers of the [RTO/RCO]. After such testing the Permittee shall maintain the combustion chamber temperature of the [RTO/RCO] at or above the level approved by the Division in writing. Until such approval is granted, the Permittee shall maintain the combustion chamber temperature of the [RTO/RCO] at or above the temperature at which testing was performed.
- iii. The Permittee shall install, calibrate, operate, maintain, and inspect a continuous temperature monitoring and recording system, in accordance with the manufacturers’ recommendations, to monitor the combustion chamber temperature of the [RTO/RCO] substantially similar to the requirements of Condition 2.2(A)(2)(e) of Permit R03.

e. Enviva will use commercially reasonable efforts to, within twelve (12) months of issuance of a permit authorizing the control or engineering alternative specified in Paragraph 6(c), install and commence operation of that control or engineering alternative. In any event, Enviva shall install and commence operation of that control or engineering alternative within eighteen (18) months of issuance of a permit authorizing the control or engineering alternative.

f. Within sixty (60) days of receipt of the results of the initial compliance testing required by Condition 2.2(A)(2)(c) of Permit R03, Enviva shall establish a site-specific emission

factor for VOCs for the Facility's dry hammermills, calculate its facility-wide potential emissions at the tested softwood percentage, and provide such emissions calculation to the Division with a copy to CAC. Enviva will perform this VOC emissions calculation, as well as future VOC emissions calculations for the Facility, utilizing a calculation methodology that has been approved by the Division in writing. Enviva will provide CAC with documentation of the Division's approval of such methodology within seven (7) days of receipt of such documentation from the Division. If actual VOC emissions from the Facility are estimated to be at or above 250 tons per year ("tpy"), Enviva shall curtail Facility production to stay below 250 tpy actual total VOCs until VOCs from the dry hammermills are controlled as required by Paragraph 6(c) of this Agreement. Enviva shall continue to utilize a VOC emission factor for uncontrolled emissions from the dry hammermills until Enviva conducts new performance testing following utilization of an [RTO/RCO] to control dry hammermill VOC emissions, and the Division approves a new dry hammermill emission factor based on such performance testing. Notwithstanding the above emission calculation requirement, nothing herein shall restrict any Party from utilizing credible evidence to demonstrate Enviva's compliance (or noncompliance) with applicable VOC emission limits.

7. CAC agrees not to oppose the modification of Permit R03 to the extent that such modification is addressed by, and complies with, the terms of this Agreement.

8. All notices or documents required to be provided to CAC under this Agreement shall be provided electronically to the following:

June Blotnick
Clean Air Carolina
june@cleanaircarolina.org

Heather M. Hillaker, Esq.
Southern Environmental Law Center
hhillaker@selcnc.org

Keri N Powell, Esq.
Powell Environmental Law
kpowell@powellenvironmentallaw.com

9. DAQ, which makes no admission of liability, violation, or wrongdoing, will use its best efforts to expeditiously review and process all permit applications required by this Agreement.

10. Within fourteen (14) days of execution of this Agreement by all Parties, the Parties shall jointly move to stay the Petition. Within fourteen (14) days of the effective date of a final revised permit for the Facility that satisfies Paragraphs 6(a), 6(c), and 6(d) above, CAC shall file a Voluntary Withdrawal with Prejudice of its Petition for Contested Case Hearing, Docket No. 19 EHR 00866.

11. The Parties agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. No Party shall apply for attorney fees or costs under any rule or law, and no Party shall be liable for any attorney fees, costs, or expenses incurred by the other.

12. The Parties agree that the consideration for this settlement are the promises contained herein and that this Settlement Agreement contains the whole agreement between them relating to the subject matter thereof.

13. This Settlement Agreement shall be binding upon the Parties, their successors and assigns, and is entered into knowingly, intelligently, and voluntarily upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Settlement Agreement on behalf of the Parties hereto.

14. This Agreement may be executed and delivered in counterparts by electronic mail, each of which so executed and delivered counterpart is original, and such counterparts, together, shall constitute but the same instrument.

[Signature Page to Follow]

CLEAN AIR CAROLINA

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF AIR QUALITY

By: *June Blotnick*
June Blotnick
Executive Director

By: _____
Michael Abraczinskas, Director
Division of Air Quality

Date: *June 3, 2019*

Date: _____

ENVIVA PELLETS HAMLET, LLC

By: *Yana Kravtsova*
Yana Kravtsova
VP, Environmental Affairs and Chief Compliance Officer

Date: *May 30, 2019*

CLEAN AIR CAROLINA

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF AIR QUALITY

By: _____
June Blotnick
Executive Director

By: Michael A. Abraczinskas
Michael Abraczinskas, Director
Division of Air Quality

Date: _____

Date: 5/30/19

ENVIVA PELLETS HAMLET, LLC

By: _____
Yana Kravtsova
VP, Environmental Affairs and Chief Compliance Officer

Date: _____