

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Broadrock Gas Services LLC

File No.: AIR 11-24

AAD No.: 12-002-ARE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Broadrock Gas Services, LLC (the “Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving, with regard only to RIDEM and the Respondent, the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to the Respondent and the Rhode Island Resource Recovery Corporation (“RIRRC”) by RIDEM on February 2, 2012. This Agreement does not affect any rights or causes of action that either RIDEM or Respondent, respectively, may possess against the RIRRC, arising from or related to the NOV.

B. STIPULATED FACTS

- (1) WHEREAS, RIRRC owns and operates a solid waste landfill located at 65 Shun Pike in the town of Johnston, Rhode Island (the “Landfill”).
- (2) WHEREAS, a landfill gas (“LFG”) collection system, consisting of a network of underground gas collection wells, interconnecting pipes, valves, monitoring and measuring equipment, vacuum pumps, blowers, primary condensate management equipment, and other equipment used to collect LFG from the Landfill (the “LFG Collection System”) is installed at the Landfill.
- (3) WHEREAS, the Respondent took ownership of the LFG Collection System on November 9, 2010 and currently installs, maintains, and operates the LFG Collection System based on financial funding received from RIRRC.
- (4) WHEREAS, on February 2, 2012, the RIDEM issued an NOV to the Respondent and the RIRRC alleging certain violations of the RIDEM’s *Air Pollution Control Regulations*.

- (5) WHEREAS, the Respondent has denied, and continues to deny, the violations ascribed to Respondent as set forth in the NOV and has requested an administrative hearing to contest those alleged violations.
- (6) WHEREAS, the requirements within this Agreement shall remain in effect until the RIDEM renews or extends the Landfill's Phase V license.
- (7) WHEREAS, RIRRC and the Respondent previously engaged Cornerstone Environmental Group, LLC ("Cornerstone"). A copy of the Cornerstone engagement agreement has been provided to the RIDEM by the Respondent under letter dated February 28, 2012. Such engagement was subsequently terminated by RIRRC and Respondent.
- (8) WHEREAS, on June 5, 2012 the Respondent submitted to the RIDEM a document that describes the existing gas collection system, vacuum sources, and operating parameters at the Landfill (the "Current Gas Collection System SOP"). A copy of the Current Gas Collection System SOP is attached hereto and incorporated herein as Attachment A.
- (9) WHEREAS, on June 8, 2012 the Respondent submitted to the RIDEM a plan to transition from the current gas management system, which utilizes multiple gas extraction points located around the Landfill, to a single gas extraction point located at the new centralized gas collection and conditioning facility (the "Transition Plan"). A copy of the Transition Plan is attached hereto and incorporated herein as Attachment B.
- (10) WHEREAS, on June 26, 2012 the RIDEM approved the Current Gas Collection System SOP (the "Current Gas Collection System SOP Approval") and the Transition Plan (the "Transition Plan Approval"). The Current Gas Collection System SOP Approval and the Transition Plan Approval are attached hereto and incorporate herein as Attachment C.
- (11) WHEREAS, on December 20, 2012, the Respondent submitted to the RIDEM a letter certifying the following:
 - (a) All work associated with the installation of the vertical wells in the active area of Phase V of the Landfill, as more fully identified on the map attached hereto as Attachment D, has been completed and all wells are operational;
 - (b) All work associated with the installation of four additional horizontal wells in the active area of Phase V of the Landfill has been completed and the wells are operational;
 - (c) All work associated with the installation of the landfill gas flare that was approved by the RIDEM under Approval No. 2141 that was issued on 23 December 2011 has been completed and the flare is available for use;

- (d) All work associated with the installation of a new twenty four (24) inch diameter header pipe for the ultra-low emission (“ULE”) flare has been completed (other than installation of permanent pipe stands) and the new header is operational;
 - (e) All work associated with the relocation of remote flare 3 (“RF3”) to the area near the ULE flare has been completed and RF3 is operational in the new location; and
 - (f) The high gas velocities previously observed in the twelve (12) inch diameter header along the south side of the Landfill has been reduced by interconnection of such header with the new eighteen (18) inch diameter perimeter header.
- (12) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the Respondent’s issues raised in the NOV on the terms and conditions set forth in this Agreement.
- (13) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM’s *Air Pollution Control Regulations*.

C. AGREEMENT

- (1) **JURISDICTION** – For the purposes of this Agreement only, the Respondent does not contest that the RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) **FORCE and EFFECT** – Except as otherwise provided herein, this Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon RIDEM and the Respondent in connection with the obligations undertaken by the Respondent under this Agreement.
- (4) **CONDITIONS** –
 - (a) The Respondent shall take the following actions:
 - (i) **IMMEDIATELY** begin participating in monthly technical meetings with the RIDEM and continue the meetings for six (6) months following the execution of this Agreement, unless the RIDEM reasonably requests that such meetings terminate sooner or continue for a period not to exceed an additional six (6) months.
 - (ii) Submit written reports to the RIDEM’s Office of Compliance and

Inspection (“OC&I”) each month that include the following information:

1. For each day of the month, the hourly average total flow of composite LFG over twenty four (24) hours (std ft³/min), the maximum flow of LFG (std ft³/min) for that day and the minimum flow of LFG (std ft³/min) for that day for each of the control devices. For the purposes of this paragraph (ii) the control devices do not include individual engines. This report shall include a summary column and a six (6) month historical trend chart for the control devices, with data plotted for each control device independently and combined for the entire site.
2. For each day of the month, the twenty four (24) hour average vacuum (inches of water column) for each control device, the maximum vacuum (inches of water column) for that day, and the minimum vacuum (inches of water column) for that day. This report shall include a 6 month historical trend line for the control devices, with data plotted for each control device independently and combined for the entire site.
3. Identification of each vertical well and horizontal trench where there were exceedances of the operating requirements described in Section C of Approval No. 1810 that was issued by the RIDEM to the RIRRC on 16 September 2004 (the “Phase V Permit”) or Approval No. RI-PSD-10 that was issued by the RIDEM to the RIRRC on 16 December 2010 for landfill gas temperature, nitrogen or oxygen in the vertical wellheads and/or trench headers in the uncapped areas of Phase IV of the Landfill and all areas of Phase V of the Landfill.
4. Identification of each vertical well or horizontal trench where a positive pressure exists in the uncapped areas of Phase IV of the Landfill and all areas of Phase V of the Landfill.
5. The tasks undertaken to address the above noted exceedances or variances identified in the report submitted under subpart 3 above.

The reports required by Section C(4)(a)(ii)1-5 above, in the form attached hereto as Attachment E, have been prepared by the Respondent and submitted to the OC&I for January, 2012 and all succeeding months through the date of this Agreement. OC&I reviewed the form and substance of such reports and finds them satisfactory. Going forward, the Respondent will continue to prepare and submit such reports to the OC&I on a monthly basis not later than the 15th day of the following month. As changes are made in the configuration of the Landfill Gas Collection System or in any flares or other destruction devices from time to time, the Respondent shall revise the form of the reports required by this section to reflect such changes.

- (iii) Submit weekly written reports to OC&I on the operation of the existing control devices (including individual engines). Specifically, the reports

must include information on when a flare or engine went out of operation and when it came back into operation if the flare or engine was out of operation for greater than one hour and the reason for the outage. If no flare or engine went out of operation for greater than one hour, the report must state as such. The reports required by this Section C(4)(a)(iii), in the form attached hereto as Attachment F, have been prepared by the Respondent and filed with the OC&I on a weekly basis since February 6, 2012. The OC&I reviewed the form and substance of such reports and finds them satisfactory. Going forward, the Respondent will continue to prepare and submit such reports to the OC&I on a weekly basis, not later than the close of business on the following Monday. As changes are made in the configuration of the Landfill Gas Collection System or in any flares or other destruction devices from time to time, the Respondent will revise the reports required by this section to reflect such changes.

- (iv) **Within fifteen (15) days of receipt of written notification from the RIDEM to the Respondent that RIDEM's review of the reports required in Section C(4)(a)(iii) above indicates a trend of repeated outages**, submit a report to OC&I that identifies the reasons for the outages, an analysis of the impact on gas collections (if any), and the action taken, or proposed to be taken, if any, to address the outages.
- (v) Comply in all material respects with the Current Gas Collection System SOP Approval, as modified by the Transition Plan and the Transition Plan Approval. No material amendments or modifications to the Current Gas Collection System SOP or Transition Plan are allowed without RIDEM's prior written approval. Such amendment or modification shall be deemed approved by the RIDEM within fifteen (15) days after submission by the Respondent, unless prior to the expiration of such fifteen (15) day period, the RIDEM has provided the Respondent with written comments or objections to the proposed amendment or modification.
- (vi) **Within forty five (45) days of execution of the Agreement**, submit to OC&I a schedule for the creation of a new set of standard operating procedures for the operation of the Landfill Gas Collection System and the flares and other destruction devices after the commercial operation date of the new power plant being constructed at the Landfill.
- (vii) **Within three (3) business days of receipt of written notification from the RIDEM to the Respondent and the RIRRC of a monitored exceedance of methane in excess of five hundred (500) parts per million at any location on the Landfill**, commence the actions specified in Section D.2.e of the Phase V Permit as may be within the control and responsibility of the Respondent. Currently, there are no specific requirements for monitoring H₂S emissions or remediating such emissions at the Landfill. The RIDEM will work with the Respondent and the RIRRC to develop mutually agreeable protocols for (i) monitoring H₂S emissions at the Landfill and (ii) appropriate actions for remediation of

such emissions.

- (viii) Implement corrective actions set forth in the Code of Federal Regulations (“CFR”) 40 CFR 60.755(b) within the responsibility and control of the Respondent for any exceedances described in Section C(4)(a)(vii) above, and if inadequate to correct the exceedances, implement additional corrective actions within the responsibility and control of the Respondent and as approved by RIDEM.
 - (ix) **Within thirty (30) days of receipt of invoices from the RIDEM for surface emission monitoring of the Landfill**, performed consistent with the manner described in 40 CFR 60.755, submit payment to the RIDEM for one-half of each invoice within thirty (30) days of receipt of the RIDEM’s written request for said payment. The monitoring shall not exceed one initial baseline monitoring, which was performed between March 29 and April 10, 2012 by Louis Berger, Inc., and three (3) rounds of follow up monitoring, and the total cost to the Respondent shall not exceed Twenty Thousand Dollars (\$20,000.00).
 - (x) From and after the time of the commercial operation date of the new power plant, the Respondent shall acquire and install pre-manufactured wellheads on any new vertical and/or horizontal wells thereafter installed in the Landfill to include an appropriate and adequately sized control valve and integral flow measurement device. The RIDEM confirms that the Landtec wellheads currently being installed on new wells at the Landfill constitutes such an appropriate device.
- (b) The reports, plans, schedules and other documents that the Respondent is required to submit to the OC&I under this Agreement shall be subject to the RIDEM’s review and approval. The reports, plans, schedules or other documents shall be deemed approved by the RIDEM within thirty (30) days after submission by the Respondent, unless prior to the expiration of such thirty (30) day period, the RIDEM has provided the Respondent with written comments. Within thirty (30) days of receiving written comments (unless a longer time is specified) the Respondent shall take all necessary actions to fully address the comments.
- (c) Penalty – Respondent shall pay to the RIDEM the sum of **Twenty Six Thousand Two Hundred and Fifty Dollars (\$26,250.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondent and the RIDEM, the Respondent shall pay to the RIDEM the sum of **Twenty Six Thousand Two Hundred and Fifty Dollars (\$26,250.00)**.
 - (ii) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

- (1) **SETTLEMENT PURPOSES ONLY** – The parties are signing this Agreement for settlement purposes only. This Agreement (a) cannot be used by any third party, (b) does not constitute any admission of fact or liability by the Respondent, (c) does not constitute an admission by the Respondent that any law, regulation or permit has been violated as alleged in the NOV, and (d) is not admissible in evidence in any proceeding other than a proceeding between the parties hereto to enforce its terms.
- (2) **RIDEM ACKNOWLEDGEMENT** – The RIDEM acknowledges and agrees that it is the Respondent's view that some or all of the requirements within this Agreement require funding from RIRRC under the Respondent's existing contractual agreements with RIRRC, and that the RIDEM shall not assess any penalty against the Respondent under Section D(4) hereof, assert any violation by the Respondent, or seek to enforce compliance by the Respondent with any provision of this Agreement for failure by the Respondent to comply with any provision of this Agreement if such failure is due strictly to any lack of funding from RIRRC under the Respondent's existing contractual arrangements.
- (3) **EFFECT OF COMPLIANCE** – Execution of this Agreement shall be deemed to resolve all issues raised in the NOV as between Respondent and the RIDEM.
- (4) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with any of the items specified in Section C(4)(a) (other than (v), (vii) and (viii) or C(4)(b) of the Agreement, the Respondent shall pay a stipulated penalty of Two Hundred and Fifty Dollars (\$250.00) per day for each and every day during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (5) **COMPLIANCE WITH OTHER APPLICABLE LAWS** – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (6) **ADDITIONAL ENFORCEMENT ACTIONS** – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of

“Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new or additional enforcement action commenced by the RIDEM after the execution of this Agreement.

- (7) FUTURE ACTIVITIES – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (8) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged against the Respondent in the NOV.
- (9) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

As to RIDEM

David E. Chopy, Chief

RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

and

Susan B. Forcier, Esquire

RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-4700 ext. 2305

As to Respondent

Randall D. Holmes, President & CEO

Broadrock Gas Services LLC
120 White Plains Road, Suite 610
Tarrytown, New York 10591
(914) 358-7413

and

Joseph J. McGair, Esquire

Petrarca and McGair, Inc.
797 Bald Hill Road
Warwick, RI 02886
(401) 821-1330

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (10) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen days prior to the prescribed deadline.
- (11) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (12) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.
- (13) HOLIDAYS AND WEEKENDS – To the extent that the date for filing any report required to be filed under this Agreement falls on Saturday, Sunday or a legal holiday, then such report shall be filed on the next business day.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Broadrock Gas Services LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Broadrock Gas Services, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Broadrock Gas Services LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of Broadrock Gas Services, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Broadrock Gas Services, LLC, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Broadrock Gas Services, LLC.

Notary Public
My Commission Expires: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____