NIXON PEABODY

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Scott M. Turner
Partner
T 585-263-1612
sturner@nixonpeabody.com

1300 Clinton Square
Rochester, NY 14604-1792
585-263-1000

29 JAN 2016 RCVD

January 28, 2016

Via Federal Express

U.S. Environmental Protection Agency, Region 2
Permitting Section, Air Programs Branch
290 Broadway
New York, New York 10007

Attention: Steven C. Riva

RE: Draft Federal Operating Permit -- Ocean County Landfill Corporation and MRPC Holdings, LLC

Dear Mr. Riva:

Enclosed please find the comments of MRPC Holdings, LLC on EPA's draft federal operating permit P71-OCMH-001. MRPC Holdings, LLC submits that that EPA's public notice was inadequate under 40 CFR Part 71, that EPA's common control decision was arbitrary, capricious, and is a violation of law in that it was not in compliance with the requirements of the Clean Air Act, and that the conditions in the draft permit improperly assign responsibilities to MRPC Holdings, LLC that are not its responsibilities and are otherwise inappropriate. Therefore, the draft federal operating permit cannot legally be issued.

Very truly yours,

Scott M. Turner

Scott M. Turner

SMT/mr
Enclosure
Cc: Emily Zambuto (via e-mail)
Kimberly Boler (via e-mail)
Smitri Sharma (via e-mail)
Richard DiGia (via e-mail)

MRPC Holdings, LLC

Comments on Draft Part 71 Permit P71-OCMH-001

Table of Contents

MRPC Holdings, LLC 1
Comments on Draft Part 71 Permit P71-OCMH-001 1
I. Introduction 3
II. Inadequate Public Notice 3
III. Issue of Common Control 4
(1) Alabama Power and the 1980 PSD Regulations 4
(2) Single Source Determination 6
(3) Common Control: General Principals 6
(4) Absence of Common Control 7
(5) Unauthorized Single Source Determination 10
(6) Implications of EPA's Single Source Determination 11
IV. Technical Comments on the Draft Part 71 12
V. Conclusion 14
Exhibit 1. Company Hierarchy 16
Exhibit 2. Purchase Order for the Caterpillar Engines 17

COMMENTS ON DRAFT PERMIT P71-OCMC-001

I. Introduction

The comments herein and in Exhibit 1 and 2 are submitted by MRPC Holdings, LLC (MRPC) in response to the above-referenced Draft Part 71 Permit issued for public comment by the United States Environmental Protection Agency (EPA) Region 2[1]. MRPC also relies on all previous submissions by MRPC and Ocean County Landfill Corp. (OCLC) on the question of common control as though incorporated herein. The prior submissions included but are not limited to the responses made by MRPC and OCLC, to questioning by EPA on common control matters. MRPC also adopts the comments on the Draft Part 71 Permit submitted directly by OCLC on January 28, 2016.

The comments below address matters set forth in the Public Notice, the Statement of Basis accompanying the Draft Part 71 Permit issued by EPA for comment on November 6, 2015 and in related conditions proposed therein. They include objections to EPA's treatment of the electric generating facilities (a/k/a "GTE Facilities/GTE Operations") owned and exclusively operated by MRPC and the solid waste facility (SWF) owned and exclusively operated by OCLC as a single source for Title V permitting or any other purposes of the Clean Air Act, 42 U.S.C. 7401 et seq. (CAA). They include objections to EPA's Order requiring MRPC and OCLC to file Part 71 Permit applications and the proposal to terminate the separate Part 70 permits in effect separately for MRPC and OCLC. And lastly, the comments address MRPC's objections to the proposed issuance of a single Part 71 Permit that treats MRPC and OCLC as a single Permittee with respect to all permit conditions including those pertaining to the facilities and emission units owned and exclusively operated by the other.

II. Inadequate Public Notice

The Public Notice issued by EPA failed to include pertinent information in the Background section of the Public Notice resulting in insufficient notice to the public, especially for those who may not be familiar with the applicants and their Title V permitting history. More importantly EPA's action in this matter will likely undermine confidence in other agencies' determinations that landfills and GTE Facilities are not under common control. Although mentioned in the Statement of Basis, within the notice itself, there was no mention of: (1) EPA's objection to the proposed Title V permit for MRPC Facility ID No.: 78901, Activity ID No.: BOP990002, on November 2, 2005 based on, among other issues, a potential "common control" issue in regards to MRPC's GTE Operations and the Landfill; (2) EPA's presumption of common control and the November 2011 Order requiring MRPC and OCLC to submit Part 71 applications; or (3) EPA's intent to revoke existing Part 70 Permits administered by the New Jersey Department of Environmental Protection, Division of Air Quality, Bureau of Air Permits (NJDEP) (i.e. activities involved in the permit action as required by 40 CFR Part 71.11(d)(4)(i)(C) and information considered necessary or proper as required by 40 CFR Part 71.11(d)(4)(i) (H)).

As EPA argued successfully before the Third Circuit Court of Appeals, its determination on the question of common control was not final and is part of this permitting process. See Statement of Basis, fn11. The Public Notice should have included such matters, and the tenor of EPA's disposition of the pivotal issue of common control, thereby giving interested parties an opportunity to respond.

In addition, the Background portion of the Public Notice includes ambiguous statements regarding the applicant, and this too renders it ineffective notice. As allowed by the Order, two separate applications were filed, not one, by MRPC Holdings, LLC and Ocean County Landfill Corp., two very separate

[1] References to MRPC refer to MRPC alone or to MRPC and/ or its subsidiaries MRPC Holdings, LLC and Ocean Energy Holdings, LLC and/or one or more of the affiliates in its closely-held corporate family. *See* Exhibit 1.

applicants and entities as discussed further herein. MRPC and OCLC have in no way conceded to a common control determination that would support a single-source determination by EPA.

III. Issue of Common Control

Since MRPC's GTE Facility first became operational in 1997, the GTE Operations and the SWF have been separately permitted, separately owned, separately operated and separately controlled.

There was no objection of MRPC and OCLC being issued and holding separate permits by either NJDEP or EPA up until the Title V permit renewal with modification for MRPC, which EPA received on September 21, 2005. It was then that EPA objected to the issuance of the permit under CAA section 505(b)(1) and 40 CFR § 70.8(c) in a letter to NJDEP dated November 2, 2005. That letter summarized the basis of EPA's objection to the proposed permit as follows: it "(1) is not accompanied by the written common control determination requested in EPA's comments on the draft permit; (2) contains a Federal-only section identifying permit conditions that are not enforceable by the State, a situation inconsistent with the premises under which [NJDEP] received approval of its Title V operating permits program; (3) contains an insufficient statement of basis; and (4) does not address all Federal requirements from both the New Source Performance Standards for Municipal Solid Waste Landfills' and the National Emission Standards for Hazardous Air Pollutants; Municipal Solid Waste Landfills' that apply to the landfill gas received by MRPC."

The Statement of Basis provides overview of the permitting history of the sources and EPA's presumption of common control, a decision was seemingly made May 2009 in a letter to MRPC[2]. However, EPA's presumption on 'common control' in the MRPC – OCLC case is pointedly flawed, has no basis in fact, and has been shown by the evidence contained within this response to be unauthorized and unlawful.

(1) Alabama Power and the 1980 PSD Regulations

Pursuant to the CAA, permitting authorities are required to review Title V permit applications to determine, inter alia, whether two or more nominally separate facilities should be permitted as a single source of air emissions. Thus, a source determination, is meant to ensure that all emissions from a single source are considered when determining what requirements and permit conditions apply to the source. This frequently happens without dispute or controversy when the emission points are all within a common fence line at a single facility, although the consequence of permitting such sources together is to increase the "potential to emit" of the collective "source", possibly triggering additional requirements for larger sources of air pollutants. Source determinations are derived from the applicable federal and state statutory definitions of "major source".

The CAA regulates major sources of criteria pollutants and major sources of hazardous air pollutants (HAPs) more stringently that it regulates minor sources of those pollutants. It does so through provisions of the New Source Review (NSR) and Title V operating permit programs, as well as the CAA § 112 National Emission Standards for Hazardous Air Pollutants (NESHAP) program (which also distinguishes between major and area sources). Whether and when sources should be aggregated together to constitute a single source, becoming subject to more onerous major source requirements, is grounded in the definitions of "major" and "stationary sources" for these programs. These definitions have been interpreted and regulatory examined and applied by states and EPA itself in a variety of permitting

[2] *See* letter from Ronald J. Borsellino to Scott Salisbury and Lawrence C. Hesse regarding the Common Control Determination for OCLC and MRPC, dated May 11, 2009

circumstances.

EPA promulgated a new definition of "stationary source" for the PSD program in the wake of the *Alabama Power* decision that addressed the question of which pollutant-emitting activities may be aggregated to form a single source for air permitting purposes. In doing so, EPA openly acknowledged that the *Alabama Power* decision established several limits upon EPA's ability to aggregate sources based on the definition to be promulgated: (1) it must carry out reasonably the purposes of PSD; (2) sources aggregated per the definition must approximate a common sense notion of "plant"; and (3) EPA must *avoid* aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building", "structure", "facility", or "installation".

EPA stressed in its preamble to the 1980 PSD regulations that the *Alabama Power* decision required the agency to "provide for the aggregation of pollutant-emitting activities according to considerations such as proximity and ownership", only if such activities would reasonably "fit within four permissible statutory terms" when aggregated. Accordingly, EPA PSD regulations defined "stationary source" as "any building, structure, facility or installation which emits or may emit a regulated NSR pollutant." The regulation also defined the terms "building," "structure," "facility," or "installation" to include:

[A]ll of the pollutant-emitting activities which (1) belong to the same industrial grouping, (2) are located on one or more contiguous or adjacent properties, and (3) are under the control of the same person (or persons under common control).

The definition of these four component terms (i.e. "building," "structure," "facility," or "installation") of stationary source establish the three criteria for aggregating otherwise separate facilities for air permitting purposes, not only for NSR/PSD, but also for Title V purposes.

EPA also made a number of pronouncements and clarifying statements in the 1980 Preamble, in the course of responding to comments on the revised definitions. Of particular note is that EPA specifically rejected a subjective "functionality test," *i.e.*, considering how two or more separate facilities might interact or function relative to one another, preferring instead to employ the more objective factor of whether two pollutant-emitting activities are part of the same major industrial grouping within the Standard Industrial Classifications ("SIC") Code. The alternative of considering functional interrelationships when making "stationary source" determinations was rejected as being too subjective and unpredictable, and likely to "embroil the Agency in numerous fine-grained analyses," which EPA sought to avoid.[3]

Ironically in the case of MRPC and OCLC, EPA has blatantly ignored current guidance which provides permitting authorities an analytical approach that simplifies the determination process. Previous submissions by MRPC and OCLC to EPA, which clearly demonstrates separate ownership and operational interdependence guided by a negotiated contract, have been disregarded and overlooked by EPA Region 2. Even though these submissions validate a determination of no common control demonstrated by the fact that the relationships between MRPC and OCLC and their respective facilities are governed by contract terms which were freely negotiated by unrelated companies with equal bargaining power and, again, no one of which states or even implies that one contracting party shall have control over the facilities and emission units owned and operated by the other.

[3] *See* Memo. from William L. Wehrum to Regional Administrators I-X, dated January 12, 2007

(2) Single Source Determination

In accordance with the aforementioned federal statutes and regulations, as well as EPA orders and guidance, for facilities to constitute a single stationary source for purposes of CAA permitting, in making a single source determination, the facilities must:

1. Be located on one or more contiguous or adjacent properties;
2. Belong to the same industrial grouping or use the same 2 digit Standard Industrial Classification (SIC) code; and
3. Be under common control of the same person (or persons under common control).

If all three questions are answered in the affirmative, then the facilities must be aggregated for CAA permitting purposes. In this case, there is no dispute that the first two criteria are met. Thus, the question of whether the GTE Operations and the SWF are a single source devolves to whether both facilities are under "common control".

Here, EPA presumed common control and put the burden on MRPC and OCLC to prove otherwise. Yet, EPA has failed to acknowledge relevant facts such as the existence of MRPC leases and their relevance in providing evidence of no common control or at least to overcome any presumption to the contrary. And the predicate for EPA's decision requiring treatment of the MRPC GTE Operations and the OCLC SWF as a single source for Title V permitting purposes – and the sole cause stated for initiating proceedings for Part 71 permitting to replace the currently effective Part 70 Permits issued separately to MRPC and OCLC by the NJDEP – is an unwarranted and unlawful.

For the reasons set forth throughout these comments, and in previous submissions, MRPC objects to its GTE Operations being treated as a single source with OCLC's SWF for Title V permitting or any other CAA purpose.

(3) Common Control: General Principals

EPA has not provided a defined analytical process for conducting a common control analysis. However EPA has indicated that in making collocation determinations, it is guided by the Securities and Exchange Commission's general definition of control, under which "common control" means "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 240.12b-2; 45 Fed. Reg. 59,874, 59,878 (Sept. 11, 1980). Common control determinations are to be made on a case-by-case basis and should focus on the "power of one business entity to affect the construction decisions or pollution control decisions of another business entity." 45 Fed. Reg. at 59,878.

EPA has issued a number of interpretive letters regarding the scope of "common control." While these letters are non-binding, and understanding that some of these letters appear to misapply the "support facility" test for determining a source's industrial grouping (SIC major group code) noted above, some of these letters are revealing of EPA's reasoning in making common control determinations. In general, it appears from these letters (Spratlin Letter, Werner Letter) that EPA will find that common control is established when one of the following is present:

1. Ownership of two entities by the same parent corporation or subsidiary of the parent corporation;
2. A contractual arrangement or voting interest giving one entity decision-making authority over the operations of a second entity; or
3. A contract for service relationship between two entities, in which one sells all of its product to the other under a single purchaser contract.

A fourth factor has also been identified in some interpretive letters, the existence of a support or dependency relationship between the two entities such that one would not exist "but for" the other, but this also appears to be a misapplication of the "support facility" analysis authorized in the preamble to the 1980 PSD regulations and specifically recognized as being limited to the industrial grouping factor in a more recent EPA order denying a petition to object to a renewal Title V operating permit for a compressor station in Colorado.[4]

(4) Absence of Common Control

Simply, under the EPA SEC Definition Approach, the GTE Operations and the SWF are not under common control because neither entity has the right nor ability to direct or participate in the other's decision-making.[5]

The Spratlin Letter Approach presents a broader analytical framework for evaluating common control that does the EPA SEC Definition Approach. The Spratline Letter adopts the following Webster's dictionary definition: control means "to exercise restraining or directing influence over," "to have power over," "power of authority to guide or manage," and "the regulation of economic activity." And under the Spratlin Approach, when one entity locates on another's property, a rebuttable presumption arises that there is a control relationship. To overcome this rebuttable presumption, facilities are required to explain how they interact with one another.

The list of considerations EPA has used to determine "control" includes:

1. Whether the facilities share common workforces, plant managers, security forces, corporate executive officers, or board of executives?
2. Whether the facilities share common equipment, other property, or pollution control equipment?
3. What does the contract specify with regards to pollution control responsibilities of the contractee?
4. Can the managing entity of one facility make pollution control decisions that affect pollution control at the other facility?
5. Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?
6. Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can the new source purchase raw materials from and sell products or byproducts to other customers? What are the contractual arrangements for providing goods or services?
7. Who accepts responsibility for compliance with air quality control requirements or for violations of those requirements?
8. What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?
9. Does one operation support the operation of the other? What are the financial arrangements between the two entities?

Under the Spratlin Letter Approach, the major indicators of control pertain to management structure, plant managers, payroll, and other administrative functions (i.e. items 1-5 above). Where these questions are answered in the negative, "then the new source is most likely a separate entity under its own control."

---

[4] *See* 45 Fed. Reg. at 52,695; Order Responding to Petitioners' Request that the Administrator Object to Issuance of a State Operating Permit ("Jackson Order II"), Petition No. VIII-2010-4, at pp. 16-17

[5] *See* Winnebago Industr., Inc. v. Iowa Dep't of Natural Resources, Case No. CVCV01608, Slip Op., at 7-12

Where, however, there is no major relationship between the two entities, but there is a positive number to a "significant number" of the other indicators, there may still be common control.

In the case of the OCLC SWF and MRPC, it is undisputed that there is no common ownership. Therefore, the multi-factor Spratlin Letter Approach applies and here is where EPA should have found an absence of common control based on the following:

1. Common workforce, plant managers, security forces, corporate executive officers, or board of executives

   MRPC and OCLC are two separately owned entities. They do not own stock in the other's company much less a controlling interest, they have no shared corporate officers or employees, and they have no management agreement or any other type of agreement wherein one has authorized the other to exercise any operational control over their respective facilities and emission units.

2. Sharing of equipment, property, pollution control equipment

   MRPC hold leases for the GTE Facilities which it exclusively owns and operates. OCLC is the legal owner and exclusive operator of the OCLC SWF and all the emission units at the SWF including its landfill gas collection/delivery systems and flares. If the landfill gas was not sold to MRPC, the OCLC SWF has the ability to flare all of the gas produced and has a Part 70 Permit issued by NJDEP authorizing it to do so. If the GTE Operations were to shut down or if the gas production at the SWF exceeds the capacity of the GTE Facilities, the SWF could flare the gas or sell it to another end user.

3. Contractual provisions regarding pollution control responsibility of contractee

   Pollution control at each facility is the responsibility of each separate entity. OCLC delivers the landfill gas to end user, MRPC, who is the legal owner and exclusive operator of the GTE Operations and all the emission units at the GTE Facilities including the gas conditioning systems and engine-generator sets.

4. Managerial decisions at one facility affecting pollution control at the other facility

   MRPC is not engaged in the business of solid waste disposal; OCLC is not a generator of electricity.[6] The underlying contracts carefully delineate each entity's separate and independent ownership interest in the landfill gas, with the title passing from GASCO to MRPC at the point of delivery. MRPC has full managerial control over their engine operations, and OCLC has full managerial control over their flaring operations. Each entity is responsible for the pollution control/emission units under their separately issued Part 70 Permits.

   The revenue paid to GASCO and OCLC for the purchase of landfill gas and the shared tax credits, is insignificant compared to the revenue it receives from waste disposal at the landfill – and notably the OCLC SWF would continue to operate regardless of whether the SWF derived any revenue from the landfill gas or simply flared it. The arrangement between MRPC and GASCO/OCLC is simply a mutually beneficial business relationship and not a situation where one entity has power or authority over the other.

[6] The GTE Operations are not an operation of the OCLC SWF as represented by EPA.

Neither MRPC nor OCLC has any financial investment in the other and neither has any control over the decisions of the other regarding the operation of their respective facilities or the emissions units at their respective facilities.[7]

5. Common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, other administrative functions

   It is undisputed that there are no common payroll activities, employee benefits, health plans, retirement plans, or other administrative functions.

6. Sharing of intermediates, products, byproducts other manufacturing equipment; Purchase of raw materials and sale of products to other customers; Contractual arrangements respecting same

   The MRPC GTE Operations and OCLC SWF do not share any products, byproducts or other manufacturing equipment.

   By choice, MRPC is engaged in the business of generating 'green power,' that is, in generating electricity using only landfill gas as fuel instead of more traditional fuel sources such as natural gas, and while OCLC SWF is the current and only provider of landfill gas to MRPC GTE Operations, MRPC retains the right to sell electricity produced to the local utility distribution network. Moreover, MRPC is not obligated to take all the gas from OCLC. Under the Purchase Agreement, MPRC has the absolute right to control and regulate the flow of landfill gas entering the GTE Facilities.

7. Responsibility for compliance with or violation of air quality control requirements

   Per the express terms of the entities' contracts, each entity is responsible for the compliance of its own facility with all applicable laws and regulations, including air pollution control requirements. Moreover, each facility has its own Part 70 operating permit with separate compliance monitoring, recordkeeping, reporting and certification requirements. Additionally, as for the reasons already articulated above, decisions regarding air pollution control at one facility do not dictate or otherwise force air pollution control decisions at the other facility.

8. Dependency of one facility on another; limitations in case of shut-down

   As articulated above, OCLC owns and operates the landfill gas collection and control system. OCLC SWF would continue to operate regardless of whether the SWF derived any revenue from the landfill gas or simply flared it. The arrangement between MRPC and GASCO/OCLC is simply a mutually beneficial business relationship and not a situation where one entity has power or authority over the other.

   By choice, MRPC is engaged in the business of generating 'green power,' that is, in generating electricity using only landfill gas as fuel instead of more traditional fuel sources such as natural gas, and while OCLC SWF is the current and only provider of landfill gas to MRPC GTE Operations, MRPC retains the right to sell electricity produced to the local utility distribution network. Moreover, MRPC is not obligated to take all the gas from OCLC. Under the Purchase Agreement, MPRC has the absolute right to control and regulate the flow of landfill gas entering the GTE Facilities.

9. Support of one facility's operation on the other; financial arrangements

   MRPC has no service relationship with the solid waste disposal customers that dispose waste at the OCLC's SWF.

---

[7] Splitting the amount of a tax credit available to the seller or user of a renewable resource like landfill gas is obviously a component of consideration, not a 'financial interest' in each other's company as mischaracterized by EPA. Common Control Letter, at p.4.

OCLC has no service relationship with the customers purchasing electric power or capacity from MRPC; nor does it have any authority to affect or influence the other's decisions with respect to such services or service fees.

Business entities would not enter into contractual arrangements unless there were some mutual benefits to be gained. The mutuality of benefit derived from typical business contracts, however, does not equate to control of one business entity over the other. The basic financial arrangement between MRPC and OCLC is that the SWF delivers the landfill gas to the MRPC in-take line, and MRPC purchases the landfill gas to fuel its GTE Operations.

In the end, evaluating the totality of the facts enumerated above in light of the Spratlin Letter factors and the definition of "control" adopted therein, a finding of no control is rational, reasonable and fully supported by the analysis set forth above. Notably, the first five factors in the analysis – i.e., the "major indicators of control"- do not support a finding of common control. And, there are not any other indicators, let alone a "significant number," suggesting common control. As part of this permitting process, EPA needs to provide a detailed explanation of its decision-making process and supply a more comprehensive record explaining its analysis of the common control elements, consistent with standards and guidance EPA expect from other regulatory agencies for purposes of CAA permitting, in making a single source determinations.

(5) Unauthorized Single Source Determination

MRPC objects to the 'common control' determination EPA previously made in May 2009. Particularly objectionable are the statements suggesting that the OEC engines at MRPC were owned by Atlantic Pier Company, Inc. (APC) and the claims made regarding control of stock and financial investments in each other's company; and their misunderstanding of the Manchester Renewable Power Corporation's past relationship with respect to GASCO (a gas collection and delivery company).

MRPC Holdings, LLC (f/k/a Manchester Renewable Power Corp., 1995-2008) held a Power Purchase Agreement with JCP& L and entered into a contract to purchase gas from GASCO. Manchester Renewable Power Corp. was purchased prior to GTE Operations (i.e. the original set of six engines installed in 1995 did not exist when Manchester Power Corp. was purchased).

As detailed in Exhibit 1, MRPC Holdings, LLC owns 100% of the MRPC project (the GTE Facility consisting of the original set of six Caterpillar G3516 engines installed in 1995) and Ocean Energy Holdings, LLC an affiliate of MRPC Holdings, owns 100% of the OEC project (the GTE Facility consisting of six Caterpillar G3520LE engines).

As shown in the Common Control Letter, in making its determination on common control, EPA did not dispute the fact that OCLC is the exclusive owner and operator of the SWF or the fact that MRPC is the exclusive owner and operator of the GTE Operations, and neither has controlling interest over the other. EPA seemingly disregarded this and instead turned to an invalid presumption of common control based solely on the location of the GTE Facilities relative to the OCLC SWF. However, while adjacent location is one of the three criteria that must be satisfied for single source treatment, it is not evidence of common control of the same person as required by the CAA and EPA regulations for permitting a single source.

MRPC objects to the misstatements and false impressions throughout the Statement of Basis and draft Part 71 Permit conditions concerning the legal status and relationships of MRPC and OCLC and the MRPC GTE Facilities and the OCLC SWF. EPA's characterizations of their commercial interactions and MRPC's choice to use only landfill gas as fuel in their engines to generate 'green power' as a 'common

control' relationship, its decision to therefore treat their facilities as a single source and name the source 'Ocean County Landfill and MRPC Holdings LFGTE Operation,' does not change the relevant facts enumerated above.

MRPC GTE Facilities and the OCLC SWF are different businesses and emission sources with emission units that are owned and exclusively operated by wholly unrelated companies. MRPC objects to any and all statements in the Statement of Basis and Part 71 Permit conditions that intentionally or otherwise imply the existence of any facts contrary to those enumerated above. Such contradictions of indisputable facts should be retracted and corrected for the record.

Tellingly, neither in the Common Control Letter, nor at any time since, has EPA identified any person with common control over MRPC and OCLC or the GTE Operations or the SWF and their respective emission units. As demonstrated conclusively by the facts enumerated herein, no evidence of common control by the same person can be found and, indeed, all relevant evidence proves an absence of common control.

Again it is MRPC's position that EPA has no statutory or regulatory authority to combine MRPC's GTE Facilities and their emission units as a single source with OCLC SWF and their emission units for Title V Permitting or any other CAA purpose. As indicated above, the CAA plainly authorizes such treatment only where emission sources group are in fact 'under common control'.

(6) Implications of EPA's Single Source Determination

In the case of MRPC and OCLC, EPA has relied on a legally impermissible functional relationship test to overcome the absence of, and in lieu of, finding common control. And functional relationships are not common control, particularly not where the relationship is defined by contracts freely negotiated by unrelated parties that have no terms authorizing control over the other party's company or its facilities. Such relationships, however beneficial to the parties, cannot lawfully be used as satisfying the finding of common control required expressly, unambiguously, by the CAA and EPA regulations. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra, 467 U.S. at 842-3; Auer v. Robbins, supra, 519 U.S. at 461; Michigan v. EPA, supra, 135 S. Ct. at 2706; Summit Petroleum Corp. v. USEPA, supra.

Furthermore, EPA has strong-armed OCLC and MRPC into filing Part 71 Permit applications, has issued a single draft Part 71, and has proposed to revoke the separate Part 70 Permits issued to MRPC and OCLC by NJDEP.

As EPA is aware, the provision of the CAA authorizing EPA to group emissions sources for permitting as a single source, is to ensure that large companies are not able to spin off portions of their operations into separate components and avoid regulation as a major stationary source commensurate with their actual size and impact on the environment. Combining the independently owned and operated MRPC GTE Facilities and the OCLC SWF for treatment as a single source is not consistent with this purpose. Further, Congress has obviously not authorized EPA to dictate which companies must own and operate emission sources. It also states that obvious to say that Congress has not authorized EPA to decide that unrelated companies must combined their operations. EPA's role is to regulate the outcome as it affects air quality.

As a leading landfill gas developer, MRPC is very concerned with this EPA permitting action (i.e. the presumption of common control solely based adjacency, the unlawful use of functionality test, the subsequent single source determination) as it represents a serious departure from sensible permitting

policies and if pursued will prove to be a significant hindrance to the development of future privately owned and operated GTE projects.

The business model, strategic planning, economics and day-to-day operation of a GTE Facility is drastically different from those of a privately owned SWF. More specifically, the revenue to a privately owned SWF from selling landfill gas rather than simply flaring, is not worth the risk and liability associated with the regulatory agency imposing permit conditions holding the landfill accountable for the compliance and liable for any non-compliance by a GTE developer.

IV. Technical Comments on the Draft Part 71

MRPC's comments regarding the technical requirements and conditions in the proposed Part 71 Permit are presented below. They include objections and they detail changes that would be necessary even if permitting as a single source were authorized.

Source-Wide Permit Requirements

For the reasons stated above, MRPC objects to being treated as a single source with the OCLC SWF and objects to the use of EPA's unauthorized 'permit-wide' conditions that would force MRPC and OCLC to be Permittees with respect to each other's facilities and emission units. MRPC is not the owner or operator of the SWF and does not have any ability to enforce OCLC's compliance with the SWF and their emission units. They are objectionable, as well, where OCLC does not have, and cannot exercise, control over MRPC GTE Facilities or its emission units.

Accordingly, even if a single source treatment were permissible in the case of MRPC and OCLC, 'source-wide' testing, monitoring, recordkeeping and reporting requirements proposed in the draft Part 71 Permit should be deleted. Any such requirements need to be specifically allocated so that the owner/operator is responsible for requirements applicable to a particular facility and its emission units. This means an allocation to MRPC only with respect to the GTE Facilities and their emission units, and an allocation to OCLC only with respect to the SWF and its emission units.

Page 17, Section I. A. General Information about the Source

The email address for Richard M. DiGia should be updated to Richard.DiGia@AriaEnergy.com

Emily Zambuto, Manager of Environmental Programs, should replace Michael Laframboise as the operating permits contact. Her email address is Emily.Zambuto@AriaEnergy.com.

Page 18, Section I.A.5. Description of Source

MRPC GTE Operations are not "related activities" of the landfill. First and foremost, both facilities maintain independent pollution control equipment capable of controlling pollution associated with landfill gas. OCLC owns the SWF's gas collection system and the SWF's flares, and maintains responsibility for them. OCLC operates the SWF, including the landfill gas collection system and the flares. MRPC owns and operates the GTE Facilities gas combustion engines, including all pollution controls, and is responsible for them. One entity cannot make decisions regarding the operation of the other's air pollution control equipment and this isn't make clear in this description.

Page 22, Section I.B.1

Clarification should be provided the heat input capacity for the described 3516 engines (i.e., 52 MM Btu/hr LHV or approximately 2150 scfm of landfill gas).

The equipment description states ... Existing *non-emergency, non-black start stationary RICE located at an area source of HAP emissions which combusts landfill ... gas.* Based on recently published formaldehyde emission rates by Caterpillar, the facility is a major source HAPs.

Page 23, Section I.B.1

Clarification should be provided the heat input capacity for the described 3520 engines (i.e., 98 MM Btu/hr HHV).

We request the removal of the serial number for EU-E2-U7-1 through U7-6. Additionally, we request a condition to allow for Unit Replacement within the Permit. Such as the following:

As required by maintenance guidelines, the engines should be overhauled regularly to maintain engine performance and operation. MRPC proposes to do this work off-site by removal of the affected engines and replacement with one of the same make, model, and maximum heat input. Once rebuilt, the engine would remain off-site or be used as a subsequent replacement unit on-site.

Following is the definition of "replacement unit" is per 40 CFR Part 51, §51.165(a)(1)(xxi) and is similarly referenced in 40 CFR §51.166:

Replacement unit means an emissions unit for which all the criteria listed in paragraphs (a)(1)(xxi)(A) through (D) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
(A) The emissions unit is a reconstructed unit within the meaning of §60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit.
(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
(C) The replacement does not alter the basic design parameters (as discussed in paragraph (h)(2) of this section) of the process unit.
(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

The equipment description refers to ... *RICE located at an area source of HAP emissions which combusts landfill ... gas.* As previously mentioned, the stationary source is a major source of HAP (formaldehyde).

Page 26, Section II.A. Sourcewide

Requirements need to be separated to make OCLC and MRPC each accountable only for compliance with those applicable to each site's emission sources (which each exclusively owns and operates)

Page 28, Section II.A.8.c.

Revised BOP120001 U1-U6 states *Annual fuel use limit is 1150 MM cubic feet/year. The fuel usage will be measured at the ~~common landfill header~~ MRPC in-take line that supplies fuel to the six engines. Should the permittee exceeds this quantitative fuel flow limit, compliance with gross heat input of 509,200 MM BTU (HHV) per year for all six engines under this group GR1 shall be required to be demonstrated.*

Revised BOP120001 for U7 states *Annual heat input limit based on permit application is 874,000 MMBTU(HHV)/any consecutive 12 months (1970 MMscf/ any consecutive 12 months at 444 BTU/scf*

HHV) under six (6) engine operational mode. This heat input limit is based on an individual 3520 engine value of 16.62 MM Btu/hr HHV.

Page 30 Section II. A.13.
This condition is unrealistic to properly implement and maintain.

Page 76, Section II.C.187
... compliance by stack emission testing ... based on each of three EPA – valid 60 - minute runs. This language implies that a three run average will not be used for the compliance determination, which is more restrictive than the existing permit conditions. Therefore, we request an appropriate change (i.e., use of three test run average) in the existing language.

V. Conclusion

For the reasons stated above, MRPC opposes the EPA's determination of common control and objects to the treatment of MRPC and OCLC as a single source for Title V permitting purposes or for any other CAA purpose. There is no cause for revoking its separate Part 70 Permit and issuing a Part 71 Permit where, as shown by the indisputable facts enumerated at Section III, above, the GTE Facilities owned and operated by MRPC and the SWF owned and operated by OCLC are not 'under common control of the same person' as required by the CAA and EPA regulations for permitting as a single source. EPA's determination on common control and its decision to permit the SWF and GTE Facilities as a single source are therefore is unauthorized and unlawful.

In addition, the Draft Part 71 Permit fails to address the complexities created by EPA's common control determination, such as how two permittees might fulfill administrative requirements that are traditionally the responsibility of one permittee or entity not two unrelated companies. To be sure, there is a functional link between the two companies. They have contracts for the sale, delivery and purchase of a SWF by-product, landfill gas, which MRPC uses to fuel its engine-generator sets to produce 'green power.' MRPC has leased sites for its GTE Facilities adjacent to the SWF leasehold to be closer to and thus lower the cost of its fuel supply. This is a basic financial arrangement, the parameters of which are spelled out in agreements negotiated at arm's length and entered into voluntarily by unrelated companies with equal bargaining power, no term of which is intended or designed to give control over their facilities or emission units to the other. The mutuality of benefit derived from typical business contracts, however, does not equate to control of one business entity over the other; otherwise, a determination of common control would be a foregone conclusion in every instance.

Lastly, EPA has appeared to have taken the opportunity in the Draft Part 71 Permit to significantly increase the cost and administrative burden of monitoring, testing, recordkeeping, and reporting obligations through new "gap-filling" requirements that did not appear in the prior permits issued by NJDEP.

Even if EPA can justify its common control determination and its single source treatment in the case of MRPC and OCLC, the draft Part 71 Permit would need extensive revision as shown above. Either separate Part 71 Permits would have to be issued or EPA would have to allocate the compliance obligations set forth in the Permit terms and conditions to the Permittee that owns and operates the emission source and emission units to which they apply. A draft Part 71 Permit or Permits would need to

be republished to enable all interested parties a fair opportunity to comment on the proposed Permit(s) as revised.

Exhibit 1. Company Hierarchy

US Power Fund III/IV (94.21%)

Reinvesting Shareholders (5.79%)

> Aria Energy, LLC (100%)

> Aria Energy Operating, LLC (100%)

> LES Manager, LLC (100%)

> MRPC Holdings, LLC (100%)

MRPC Project (100%)

> Ocean Energy Holdings, LLC (100%)

Ocean Energy Project (100%)

List of Company Officers:

Richard M. DiGia, CEO

Dan Streek, CFO

Sheila Miller, Sr. Vice President of Business Development

Dennis Plaster, Sr. Vice President of Operations

Jay Hopper, Vice President of Business Development

Kimberly Boler, Vice President, General Counsel and Secretary

Exhibit 2. Purchase Order for the Caterpillar Engines

LANDFILL ENERGY SYSTEMS
29261 Wall Street
Wixom, Michigan 48393
(810) 380-3920
(810) 380-2038 FAX

PURCHASE ORDER
CS-0898

☒ ORIGINAL ☐ CHANGE

Michigan Caterpillar - Engine Division
25000 Novi Road
Novi, MI 48375
PH# 810-349-7050

SHIP TO
Ocean County Landfill
Route 70
Lakehurst, NJ 08733
Attn: Cogen Plant
PH#: 810-380-3920

DATE	ATTN	P.O. No.	TAG No.	DELIVERY REQUIRED
3/29/96	Brian Boeye	CS-0898	4803	August 2, 1996
SHIP VIA:		YOUR REFERENCE No.		F.O.B.
Dallas Mavis				Jobsite

QUANTITY	MODEL	DESCRIPTION
6		G3516SITA Low Pressure, Landfill Gas, EIS Gensets - each consisting of the following: 1-PA4877 G3516SITA Low Pressure, Landfill Gas, EIS Engine 1-7N8549 Air Inlet Adapters 1-PA3473 4160VAC, PM Excited, 804 Frame, 800KW, 60Hz Generator 1-5N9599 Voltage Indicator - 4160 Volt 1-LA0043 2301A Load Sharing Governor 1- GAS Quote# 94-018-02 Oil Level Contact Group which includes 5N4659 Oil Level Regulator 1-GAS Quote# 95-221 Pre-Post Lube Oil Pump which consists of LA0180 Electric Prelube Pump (60Hz) 1-PA1278 Electric Starting Motors, 24VDC, LH 2-3N7056 Battery Rack 1-LA1106 Jacket Water Heater-Single, LH 1-1167848 Digital Voltage Regulator w/PF control & software 1-LA0358 Interconnect Harness - 80 Ft. 1-OP7607 Shrink Wrap Protection **TOTAL PRICE: $1,411,740.60** **TERMS: NET 30 DAYS** **FREIGHT: PRE-PAID AND ADD**
4803.PO1		

IMPORTANT: Please note instructions below, which are part of this order.

1. Place our order number on all INVOICES, PACKING LISTS AND SHIPPING TAGS.
2. See Terms and Conditions on reverse side.
3. If you cannot deliver entire order as specified please advise us at once. Substitutions not authorized by us in writing automatically cancel this order and we will not be responsible for same.

☐ Taxable ☒ Tax Exempt B38-2712011

BY Scott Gauthier

WHITE - CUSTOMER • YELLOW - ACCOUNTING • PINK - FILE

ACCEPTANCE — The Acknowledgment Copy of this Purchase Order must be signed without change and returned immediately. Upon receipt by Purchaser, the signed Acknowledgment Copy of this Purchase Order shall become a contract, of which these terms and conditions shall be a part. The material, articles, services to other items covered by this contract are hereinafter referred to as "material."

1. SHIPPING AND INVOICING — Vendor shall enclose a packing slip in each separate container and a master packing slip with each shipment. Purchaser's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing slips. Packing slips shall not show any prices.

   No charges will be allowed for boxing or crating unless otherwise provided in this contract.

   Unless authorized in writing by Purchaser, Vendor shall not undership or overship on this contract.

   Vendor shall issue separate invoices for each shipment against this contract which shall show the amount of material shipped. Bills of lading, express receipts or other evidences of shipment shall be attached to the invoices. The Purchase Order number, and part number, or where there is no part number, then a description of material shall appear on all invoices, packing slips, bills of lading, express receipts, correspondance and other instruments in connection with this contract, and where Vendor and the shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment. The Purchase Order number shall also appear on all packages, crates, or boxes.

2. EXCUSABLE DELAYS — Vendor shall be excused for delays in making deliveries in accordance with the delivery schedule agreed upon in this contract when due to causes beyond Vendor's control and without Vendor's fault or negligence, if Vendor shall notify Purchaser in writing of the cause of any such delay promptly after the beginning thereof. Where any delay in making deliveries hereunder is due to Vendor's fault or negligence or is not excused as above, Purchaser reserves the right to cancel this contract in whole or in part.

3. INSPECTION AND REJECTION — The material covered hereby shall conform to the specifications, drawings and/or other description set forth in the contract and to samples required by the contract, and shall be of good material and workmanship and free from defect. Final inspection shall be made at the plant of Purchaser designated in this contract if preliminary inspection or test is made on the premises of Vendor, it shall furnish all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors of Purchaser or the Government in the performance of their duties. The foregoing shall not relieve Vendor of the obligation to make full and adequate test and inspection. Despite any prior payment or acceptance, Purchaser may reject and return material, or any installment of material within sixty (60) days after receipt thereof at Purchaser's plant for any defect discoverable upon inspection, and at any time from any defect not so discoverable provided, however, that in the case of material delivered in advance of scheduled delivery, the sixty (60) days period shall run from the date on which the material would have been received if delivered pursuant to the schedule agreed upon in the contract. Purchaser reserves the right to reject material as above and to require Vendor to remove same promptly and to require Vendor, at Purchaser's option, either to repay Purchaser the full invoice price therefor, plus all transportation charges paid by Purchaser, or to replace such rejected material, with or without requiring performance of the balance of the contract.

4. PATENTS — Vendor agrees to indemnify Purchaser, its successors, associates, customers and agents from any and all costs and damages on account of any claim that any of the material covered by this contract (except material made to Purchaser's specifications or design) infringes any United States Letters Patent; provided Vendor is promptly notified of each such claim.

5. COPYRIGHTS — Vendor agrees to grant to Purchaser and to the Government a royalty-free right to reproduce, use, and disclose any and all copyrighted or copyrightable matter required to be delivered by Vendor to Purchaser under this contract; provided however that nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued or imply any right to reproduce anything else called for by this contract.

6. CHANGES — Purchaser may, at any time, by a written order and without notice to the sureties or any assignees, issue additional instructions, change the extent or amount of the work covered by this contract, or make changes in or additions to the drawings and specifications. If such changes cause a material increase or decrease in the amount or character of such work or in the time required for its performance, an equitable adjustment of the prices to be paid to Vendor shall be made by Purchaser and Vendor, and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted by Vendor within thirty (30) days from the date on which the change is ordered and shall set forth the amount by which it is claimed the price is increased or decreased, together with a breakdown and other information sufficient to justify the claimed increase or decrease; provided, however, that Purchaser, if it determines that the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of the final settlement of the contract. Nothing provided in this Article shall excuse Vendor from proceeding with the prosecution of the work so changed.

7. COMPLIANCE WITH LAW — Vendor shall in the performance of this contract comply with all laws, regulations, ordinances, local laws, proclamations, demands or requisitions of the Government of the United States or any state, municipal government or any authority or representative thereof which may now govern or which may hereafter govern performance under this contract.

8. TOOLS AND MATERIAL — Vendor agrees (1) that all tools, jigs, fixtures, drawings and patterns, the price of which is itemized separately hereunder shall become the property of Purchaser upon payment for the same, but Purchaser shall not be obligated to pay for same under this contract until acceptance by Purchaser of the first run of parts fabricated by the same and Vendor shall be responsible for such tools and all material furnished by Purchaser without charge hereunder, for all loss or damage thereto while in its possession and same shall be (a) appropriately segregated, marked as the property of Purchaser and numbered with the part made, in order to accurately identify same at all times, (b) kept in good working condition and (c) used exclusively for the production of goods for Purchaser and subjected to no other use except with the written permission of Purchaser; (2) to pay to the proper authority when and as the same become due and payable, all taxes, assessments and similar charges assessed or imposed on Purchaser or Vendor or which Purchaser or Vendor may be required to pay with respect to or upon the tools, etc., and material referred to in this Article 8, or any part thereof, or upon the use thereof, while the same are in Vendor's possession or control, and, (3) that upon completion, cancellation or termination of this contract, such material, tools, etc., shall be held free of charge by Vendor pending instructions from Purchaser; and in the absence of such instructions within six months Vendor shall be entitled, after 30 days notice by Registered Mail to Purchaser, to store same at Purchaser's expense. Vendor agrees that all dies and molds the price of which is itemized separately hereunder or which are furnished by Purchaser without charge shall be kept in good working condition and remain in the custody of Vendor for the exclusive use of Purchaser.

9. TERMINATION — Non-Government: (a) Purchaser, by notice in writing at any time, may terminate this contract, in whole or in part, even though Vendor is not in default hereunder and no breach thereof has occurred; such notice shall state the extent and effective date of termination and upon the receipt by Vendor of such notice, Vendor will, as and to the extent prescribed by Purchaser, stop work under this contract and placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in Vendor's possession in which Purchaser has or may acquire an interest. If the parties cannot by negotiation agree within sixty (60) days from the date of the termination notice, or within such further time as may be agreed by the parties, upon the amount of fair compensation to Vendor for termination, Purchaser in addition to making prompt payment of amounts due for articles delivered or services completed in accordance with this contract prior to the effective date of termination, will pay to Vendor, in full settlement of all claims of Vendor by reason of such termination, the following amounts without duplication: (i) the contract price for articles or services completed in accordance with the contract and not previously paid for; (ii) actual costs incurred by Vendor which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this contract, including liabilities to subcontractors which are so allocable and excluding any charge for interest or materials which may be diverted to other orders plus a reasonable profit on work actually done by Vendor prior to such termination; provided that the total settlement shall not exceed the contract price of items included in the terminated portion of the contract. (b) Termination by Purchaser under this paragraph shall be without prejudice to any claims for damages or otherwise of Purchaser against Vendor.

10. TAXES — Vendor agrees that, unless otherwise indicated in this contract (a) the prices herein do not include any state or local sales, use or other tax from which an exemption is available for purposes of this contract, and (b) the prices herein include all other applicable Federal, state and local taxes in effect at the date of this contract. Vendor agrees to accept and use tax exemption certificates when supplied by Purchaser if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices hereunder was not required to be paid by Vendor, agrees to notify Purchaser and upon request and at Purchaser's expense, to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Purchaser.

11. REPRODUCTION RIGHTS — Vendor agrees not to furnish any material made to Purchaser's designs or specifications to any other person or firm during the life of this contract and for a period of five (5) years from the date of completion or other termination of this contract without having first obtained Purchaser's written consent.

12. ASSIGNMENT — None of the monies due or to become due nor any of this work to be performed under this contract shall be assigned without the written consent of Purchaser having been obtained beforehand.

13. OFFSETS, SET-OFFS — Purchaser and Vendor agree that Purchaser shall have the right at any time to set-off any amounts now or hereafter owing, whether or not due and payable, by Vendor to Purchaser under this contract or otherwise, against amounts which are then or may thereafter become due and payable to Vendor under this contract.

14. WAIVER — The failure of Purchaser to insist, in any one or more instances, upon the performance of any of the terms, covenants or condition of this contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Vendor with respect to such future performance shall continue in full force and effect.

15. MODIFICATION — No modification of this contract shall be effective unless agreed to in writing by authorized representatives of the parties hereto. Whatever the word contract is used, shall mean this contract together with any and all modifications.

16. NOTICES — Notices to Purchaser required under this contract shall be sent [illegible] addressed to a Purchasing Department, LANDFILL ENERGY SYSTEMS, INC.

17. ENTIRE CONTRACT — This contract and the authorized modifications thereof shall constitute the entire agreement between the parties.

18. CONSTRUCTION — This contract shall be construed and interpreted in accordance with the laws of the State of Michigan.

LANDFILL ENERGY SYSTEMS
29261 Wall Street
Wixom, Michigan 48393
(248) 380-3920
(248) 380-2038 FAX

PURCHASE ORDER
CS- 2270

☒ ORIGINAL ☐ CHANGE

Michigan Cat
25000 Novi Rd.
Novi, Michigan 48375
PH#: 248-349-7050
FAX#: 248-349-7508

SHIP TO
Will Advise

DATE	ATTN	P.O. No.	TAG No.	DELIVERY REQUIRED
12/19/2005	Karl Grundemann	CS-2270		July 15, 2006
SHIP VIA:		**YOUR REFERENCE No.**		**F.O.B.**
Best Way		Quote #10070347		Destination

QUANTITY	MODEL	DESCRIPTION
18	G3520TA	Caterpillar G3520TA Generator Sets rated 1600 KW @ 0.8PF, 4160VAC, 3 Phase, 60 Hz, for use on Low BTU Landfill gas. Each genset to include the engine build consist as shown on quote #10070347, which by this reference is made a part herein. Drawings: Provide (3) three sets of dimensional and electrical drawings, O&M and parts manuals per Gen Set to: Landfill Energy Systems 29261 Wall Street Wixom, Michigan 48393 Attn: Michael LaFramboise **TOTAL NET PRICE: Will Advise** **TERMS: NET 30 DAYS** **FREIGHT: Included in Price** Please sign, date and return attached yellow copy of Purchase Order to Landfill Energy Systems attention Mike LaFramboise for acceptance of this purchase order. Name: _____ Date: _____ Title: _____
POCS2270		

IMPORTANT: Please note instructions below, which are part of this order.

1. Place our order number on all INVOICES, PACKING LISTS AND SHIPPING TAGS.
2. See Terms and Conditions on reverse side.
3. If you cannot deliver entire order as specified please advise us at once. Substitutions not authorized by us in writing automatically cancel this order and we will not be responsible for same.

☐ Taxable ☒ Tax Exempt B38-2712011 BY _____

WHITE - CUSTOMER • YELLOW - ACCOUNTING • PINK - FILE

SAFEGUARD LITHO USA Form No. 811-3/L05CS000091 2/05 2D5-10

ACCEPTANCE – The Acknowledgment Copy of this Purchase Order must be signed without change and returned immediately. Upon receipt by Purchaser, the signed Acknowledgment Copy of this Purchase Order shall become a contract, of which these terms and conditions shall be a part. The material, articles, services to other items covered by this contract are hereinafter referred to as "material."

1. SHIPPING AND INVOICING – Vendor shall enclose a packing slip in each separate container and a master packing slip with each shipment. Purchaser's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing slips. Packing slips shall not show any prices.

   No charges will be allowed for boxing or crating unless otherwise provided in this contract.

   Unless authorized in writing by Purchaser, Vendor shall not undership or overship on this contract.

   Vendor shall issue separate invoices for each shipment against this contract which shall show the amount of material shipped. Bills of lading, express receipts or other evidences of shipment shall be attached to the invoices. The Purchase Order number, and part number, or where there is no part number, then a description of material shall appear on all invoices, packing slips, bills of lading, express receipts, correspondence and other instruments in connection with this contract, and where Vendor and the shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment. The Purchase Order number shall also appear on all packages, crates, or boxes.

2. EXCUSABLE DELAYS – Vendor shall be excused for delays in making deliveries in accordance with the delivery schedule agreed upon in this contract when due to causes beyond Vendor's control and without Vendor's fault or negligence, if Vendor shall notify Purchaser in writing of the cause of any such delay promptly after the beginning thereof. Where any delay in making deliveries hereunder is due to Vendor's fault or negligence or is not excused as above, Purchaser reserves the right to cancel this contract in whole or in part.

3. INSPECTION AND REJECTION – The material covered hereby shall conform to the specifications, drawings and/or other description set forth in the contract and to samples required by the contract, and shall be of good material and workmanship and free from defect. Final inspection shall be made at the plant of Purchaser designated in this contract if preliminary inspection or test is made on the premises of Vendor, it shall furnish all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors of Purchaser or the Government in the performance of their duties. The foregoing shall not relieve Vendor of the obligation to make full and adequate test and inspection. Despite any prior payment or acceptance, Purchaser may reject and return material, or any installment of material within sixty (60) days after receipt thereof at Purchaser's plant for any defect discoverable upon inspection, and at any time from any defect not so discoverable provided, however, that in the case of material delivered in advance of scheduled delivery, the sixty (60) days period shall run from the date on which the material would have been received if delivered pursuant to the schedule agreed upon in the contract. Purchaser reserves the right to reject material as above and to require Vendor to remove same promptly and to require Vendor, at Purchaser's option, either to repay Purchaser the full invoice price therefor, plus all transportation charges paid by Purchaser, or to replace such rejected material, with or without requiring performance of the balance of the contract.

4. PATENTS – Vendor agrees to indemnify Purchaser, its successors, associates, customers and agents from any and all costs and damages on account of any claim that any of the material covered by this contract (except material made to Purchaser's specifications or design) infringes any United States Letters Patent; provided Vendor is promptly notified of each such claim.

5. COPYRIGHTS – Vendor agrees to grant to Purchaser and to the Government a royalty-free right to reproduce, use, and disclose any and all copyrighted or copyrightable matter required to be delivered by Vendor to Purchaser under this contract; provided however that nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued or imply and right to reproduce anything else called for by this contract.

6. CHANGES – Purchaser may, at any time, by a written order and without notice to the sureties or any assignees, issue additional instructions, change the extent or amount of the work covered by this contract, or make changes in or additions to the drawings and specifications. If such changes cause a material increase or decrease in the amount or character of such work or in the time required for its performance, an equitable adjustment of the prices to be paid to Vendor shall be made by Purchaser and Vendor, and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted by Vendor within thirty (30) days from the date on which the change is ordered and shall set forth the amount by which it is claimed the price is increased or decreased, together with a breakdown and other information sufficient to justify the claimed increase or decrease; provided, however, that Purchaser, if it determines that the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of the final settlement of the contract. Nothing provided in this Article shall excuse Vendor from proceeding with the prosecution of the work so changed.

7. COMPLIANCE WITH LAW – Vendor shall in the performance of this contract comply with all laws, regulations, ordinances, local laws, proclamations, demands or requisitions of the Government of the United States or any state, municipal government or any authority or representative thereof which may now govern or which may hereafter govern performance under this contract.

8. TOOLS AND MATERIAL – Vendor agrees (1) that all tools, jigs, fixtures, drawings and patterns, the price of which is itemized separately hereunder shall become the property of Purchaser upon payment for the same, but Purchaser shall not be obligated to pay for same under this contract until acceptance by Purchaser of the first run of parts fabricated by the same and Vendor shall be responsible for such tools and all material furnished by Purchaser without charge hereunder, for all loss or damage thereto while in its possession and same shall be (a) appropriately segregated, marked as the prop[illegible] Purchaser and numbered with the part made, in order to accurately identify same at a[illegible] (b) kept in good working condition and (c) used exclusively for the production of goods for Purchaser and subjected to no other use except with the written permission of Purchaser; (2) to pay to the proper authority when and as the same become due and payable, all taxes, assessments and similar charges assessed or imposed on Purchaser or Vendor or which Purchaser or Vendor may be required to pay with respect to or upon the tools, etc., and material referred to in the Article 8, or any part thereof, or upon the use thereof, while the same are in Vendor's possession or control, and, (3) that upon completion, cancellation or termination of this contract, such material, tools, etc., shall be held free of charge by Vendor pending instructions from Purchaser, and in the absence of such instructions within six months Vendor shall be entitled, after 30 days notice by Registered Mail to Purchaser, to store same at Purchaser's expense. Vendor agrees that all dies and molds the price of which is itemized separately hereunder or which are furnished by Purchaser without charge shall be kept in good working condition and remain in the custody of Vendor for the exclusive use of Purchaser.

9. TERMINATION – Non-Government: (a) Purchaser, by notice in writing at any time, may terminate this contract, in whole or in part, even though Vendor is not in default hereunder and no breach hereof has occurred; such notice shall state the extent and effective date of termination and upon the receipt by Vendor of such notice, Vendor will, as and to the extent prescribed by Purchaser, stop work under this contract and placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in Vendor's possession in which Purchaser has or may acquire an interest. If the parties cannot by negotiation agree within sixty (60) days from the date of the termination notice, or within such further time as may be agreed by the parties, upon the amount of fair compensation to Vendor for termination, Purchaser in addition to making prompt payment of amounts due for articles delivered or services completed in accordance with this contract prior to the effective date of termination, will pay to Vendor, in full settlement of all claims of Vendor by reason of such termination, the following amounts without duplication: (i) the contract price for articles or services completed in accordance with the contract and not previously paid for; (ii) actual costs incurred by Vendor which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this contract, including liabilities to subcontractors which are so allocable and excluding any charge for interest or materials which may be diverted to other orders plus a reasonable profit on work actually done by Vendor prior to such termination; provided that the total settlement shall not exceed the contract price of items included in the terminated portion of the contract. (b) Termin[illegible] Purchaser under this paragraph shall be without prejudice to any claims for dam[illegible] otherwise of Purchaser against Vendor.

10. TAXES – Vendor agrees that, unless otherwise indicated in this contract (a) the prices herein do not include any state or local sales, use or other tax from which an exemption is available for purposes of this contract, and (b) the prices herein include all other applicable Federal, state and local taxes in effect at the date of this contract. Vendor agrees to accept and use tax exemption certificates when supplied by Purchaser if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices hereunder was not required to be paid by Vendor, agrees to notify Purchaser and upon request and at Purchaser's expense, to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Purchaser.

11. REPRODUCTION RIGHTS – Vendor agrees not to furnish any material made to Purchaser's designs or specifications to any other person or firm during the life of this contract and for a period of five (5) years from the date of completion or other termination of this contract without having first obtained Purchaser's written consent.

12. ASSIGNMENT – None of the monies due or to become due nor any of this work to be performed under this contract shall be assigned without the written consent of Purchaser having been obtained beforehand.

13. OFFSETS, SET-OFFS – Purchaser and Vendor agree that Purchaser shall have the right at any time to set-off any amounts now or hereafter owing, whether or not due and payable, by Vendor to Purchaser under this contract or otherwise, against amounts which are then or may thereafter become due and payable to Vendor under this contract.

14. WAIVER – The failure of Purchaser to insist, in any one or more instances, upon the performance of any of the terms, covenants or condition of this contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Vendor with respect to such future performance shall continue in full force and effect.

15. MODIFICATION – No modification of this contract shall be effective unless agreed to in writing by authorized representatives of the parties hereto. Wherever the word contract is used, shall mean this contract together with any and all modifications.

16. NOTICES – Notices to Purchaser required under this contract shall be sent by [illegible] addressed to a Purchasing Department, LANDFILL ENERGY SYSTEMS, INC.

17. ENTIRE CONTRACT – This contract and the authorized modifications thereof shall constitute the entire agreement between the parties.

18. CONSTRUCTION – This contract shall be construed and interpreted in accordance with the laws of the State of Michigan.