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June 19, 2014

VIA CERTIFIED MAIL

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JUN 20 2014
JUN 20 2014
PUBLIC SERVICE COMM
OF MARYLAND

Mr. Patrick F. Mahoney, P.E.
President
Energy Answers Baltimore, LLC
79 North Pearl Street
Albany, NY 12207

Re: Opportunity to Resolve Claim for Civil Penalty - PSC Case No. 9199, Order No. 83517 issued August 6, 2010 Granting a CPCN to Energy Answers International, Inc. – Fairfield Renewal Energy Project

Dear Mr. Mahoney:

The Air & Radiation Management Administration ("ARMA") of the Maryland Department of the Environment (the "Department") has the responsibility to implement and enforce the ambient air quality control laws of the State, as codified in Title 2 of the Environment Article, Annotated Code of Maryland, and Title 26, Subtitle 11 of the Code of Maryland Administrative Regulations (COMAR). The Department has determined that Energy Answers Baltimore, LLC ("Energy Answers") has violated Maryland's air quality regulations.

Specifically, Energy Answers is charged with violating the following regulations:

- COMAR 26.11.02.05A, which prohibits a person from violating any term or condition of a permit, and
- COMAR 26.11.17.04C(5), which requires that emission reduction credits shall be enforceable by the Department and the EPA and shall be obtained before the date the new emissions unit commences construction.

On behalf of the Department, I am writing to offer Energy Answers an opportunity to resolve, in advance of litigation, a civil penalty claim that the State has against Energy Answers, arising out the air quality permit violation.

The Department's determination is based on the following:

1. Energy Answers received an air quality permit to construct a 120 MW Generating Facility designed to combust an average of 4,000 tons per day of processed refuse derived from municipal solid waste through the issuance of a Certificate of Public Convenience and Necessity ("CPCN") Case No. 9199 on August 6, 2010. The proposed facility, known as the Fairfield Renewable Energy Facility ("Facility") consists of four (4) identical units to be constructed on a site owned by the FMC Corporation located at 1701 East Patapsco Avenue, Baltimore, Maryland 21226. The CPCN required that Energy Answers start construction of the Facility by February 6, 2012.

2. On October 24, 2012, the CPCN was revised to extend the start of construction by 18 months from February 6, 2012 to August 6, 2013.

3. Condition A-2 of the revised CPCN states that the CPCN serves as the Prevention of Significant Deterioration (PSD) approval, Nonattainment New Source Review (NA-NSR) approval, and air quality construction permit for the Fairfield Renewable Energy Project. Condition A-2 also states, however, that the CPCN "does *not* constitute the permit to construct or approvals until such time as EA has provided documentation demonstrating that nitrogen oxides (NOx) emission offsets totaling at least 781 tons, volatile organic compound (VOC) emission offsets totaling at least 125 tons, particulate matter less than 2.5 micrograms (PM2.5) emission offsets totaling at least 156 tons, and SO2 (as a PM2.5 precursor) emission offsets totaling at least 446 tons have been obtained and approved by the MDE-ARMA and are federally enforceable. Should the PM2.5 Lowest Achievable Emissions Rate (LAER) limit be determined to be greater than the provisional LAER limit for PM2.5 in Condition 21(b) of 22 milligrams per dry standard cubic meter (mg/dscm) @ 7% O2, EA shall be required to obtain additional PM2.5 offsets for the difference between the provisional and final LAER limit at a ratio of 1:1 within 180 days of the final PM2.5 limit having been imposed by MDE-ARMA."

4. On August 5, 2013, Energy Answers provided documentation to the Department showing that the required emission offsets for the construction of one (1) unit for the proposed project were obtained from four (4) separate companies. The Department approved those emission offsets on August 5, 2013.

5. Energy Answers commenced construction of one (1) unit of the proposed facility at 1701 East Patapsco Avenue on August 6, 2013.

6. On June 2, 2014, Sasol North America, Inc. ("Sasol") notified the Department that on **May 12, 2014**, Energy Answers failed to execute the final call option on the 79.75 tons of emission offsets owned by Sasol and encumbered by Energy Answers for the Facility. Failing to obtain or maintain the emission offsets prior to or during the course of construction is a violation Maryland's ambient air quality control laws.

Energy Answers is subject to State air pollution control laws and regulations, codified in

Title 2 of the Environment Article, Annotated Code of Maryland and Title 26, Subtitle 11 of the Code of Maryland Regulations (COMAR). Section 2-610 of the Environment Article of the Maryland Annotated Code authorizes the Department to seek civil penalties of up to $25,000 for each violation of Title 2 or any rule, regulation, or order adopted or issued thereunder. Each day that a violation continues is a separate violation under Section 2-610.

Each additional day after May 12, 2014 that Energy Answers fails to obtain the required emission offsets and continues construction is an additional day of violation.

In the interest of resolving this matter without the need for litigation, the Department is offering Energy Answers the opportunity to meet with Department representatives to explore possible settlement of the Department's claims. If you would like to pursue settlement discussions on behalf of Energy Answer, please contact Angelo Bianca at (410) 537-3226 within five (5) days of receipt of this letter.

In the interim, Energy Answers must discontinue all construction operation at the Fairfield site until Energy Answers is able to demonstrate to the Department's satisfaction that it has replaced all the emissions offsets for which Energy Answers had an option to purchase from Sasol.

Very truly yours,

Roberta R. James
Assistant Attorney General

cc: Frank Courtright, MDE
Karen Irons, MDE
Steve Lang, MDE
David J. Collins, Executive Secretary, Public Service Commission
Todd R. Chason, Gordon, Feinblatt