STATE OF NORTH CAROLINA COUNTY OF MECKLENBERG	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 21 EHR 00650
CLEANAIRE NC, Petitioner, v. NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY - DIVISION OF AIR QUALITY, Respondent. ALIGN RNG, LLC Respondent-Intervenor	**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into by and among Petitioner CleanAIRE NC, Respondent North Carolina Department of Environmental Quality, Division of Air Quality ("DAQ"), and Respondent-Intervenor Align RNG, LLC ("Align"), on behalf of themselves and their respective successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, and employees. CleanAIRE NC, DAQ, and Align shall be referred to collectively herein as the "Parties."

Whereas there is now pending a contested case brought by CleanAIRE NC in the North Carolina Office of Administrative Hearings, 21 EHR 00650 ("Contested Case"), alleging violations of the North Carolina Air Pollution Control Act and state air quality regulations in the issuance of Permit No. 10644R00 (the "Permit") to Align for the BF Grady Road processing plant (the "Facility"), and DAQ and Align have denied the alleged violations; and

Whereas the Parties have engaged in a series of informal settlement discussions and have agreed to terms upon which the issues raised in the Contested Case will be resolved;

Now, therefore, the Parties agree as follows:

1. Undertakings by Align. In consideration of the promises contained herein, the adequacy of which is hereby acknowledged, Align agrees to implement the following actions:

   a) Within thirty (30) days of the effective date of this Agreement, Align will request that DAQ modify Permit No. 10644R00 to add limitations on raw biogas flow to the Facility and limitations on operating hours for Scenario 2 (Off-Specification Production) and Scenario 3 (Bypass of processing unit), along with reporting requirements for these items and for the hydrogen sulfide concentration in raw biogas and the Facility's emissions of sulfur dioxide and hydrogen sulfide, as set forth in the attached Exhibit A, which is incorporated herein. The requested modification will contain only the revisions set forth in Exhibit A.

   b) Align will ensure a program of methane leak detection and repair is implemented at all farm operations supplying biogas to the Grady Road Project. The leak detection program will consist of semiannual monitoring for the first two years from commencement of commercial operation at the Facility with annual monitoring thereafter using appropriate instrumentation (e.g., infrared cameras). Any leaks detected will be repaired within a reasonable timeframe commensurate with the extent of the leak and the availability of the necessary personnel and materials to effectuate the repair. A Farm Report summarizing the results of the on-farm methane leak detection and repair program shall be provided to DAQ annually for informational purposes.

   c) Align will copy CleanAIRE NC and its counsel on its submission of the Semi-Annual Reports pursuant to the terms in Exhibit A, and the Annual Farm Reports.

d) Align will not challenge a modified permit for the Facility consistent with this Agreement and containing the revisions set forth in Exhibit A.

2. Undertakings by CleanAIRE NC. In consideration of the promises contained herein, the adequacy of which is hereby acknowledged, CleanAIRE NC agrees to do the following:

   a) Within seven (7) days of issuance of a modified permit for the Facility consistent with this Agreement and revisions set forth in Exhibit A, CleanAIRE NC will dismiss the Contested Case with prejudice.

   b) CleanAIRE NC will not challenge a modified permit for the Facility consistent with this Agreement and containing the revisions set forth in Exhibit A.

3. Undertakings by DAQ. In consideration of the promises contained herein, the adequacy of which is hereby acknowledged, DAQ agrees to do the following:

   a) DAQ will process Align's permit modification request in compliance with 15A N.C.A.C. 02Q .0312 and will use best efforts to process and act on the request as expeditiously as practicable. The Parties acknowledge that DAQ cannot prejudge any permit application and is required to process applications it receives in compliance with applicable statutes and regulations.

4. Within seven (7) days of execution of this Agreement, the Parties will jointly request another stay of the Contested Case.

5. Each Party will bear its own costs and attorneys' fees.

6. Notice and Communication Between the Parties.

   a) All notices or documents required to be provided to CleanAIRE NC pursuant to this Agreement, including the Semi-Annual Reports and Farm Reports, shall be provided electronically to the persons identified below.

CleanAIRE NC:
June Blotnick
Executive Director
june@cleanairenc.org

Counsel for Clean AIRE NC:
Blakely Hildebrand
Southern Environmental Law Center
bhildebrand@selcnc.org

b) Any Party may change the persons and/or addresses for notice by providing notice to a representative for each Party.

7. Warranty of Capacity to Enter into Agreement. The Parties represent that they have the legal capacity to enter into this Agreement, and that this Agreement is not for the benefit of any party other than those who have entered into this Agreement, and gives no rights or remedies to any third parties.

8. Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties to this Agreement with respect to the matters referred to herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or to bind any of the Parties to this Agreement. The Parties to this Agreement acknowledge that all terms of this Agreement are contractual and not merely a recital.

9. No Admission of Liability. The Parties agree that nothing herein is intended as or should be construed as an admission as to the merits of the appeal being settled, nor should it be construed as any admission of wrongdoing or liability on the part of any party.

10. Modification by Writing Only. The Parties agree that this Agreement may be modified only by a writing signed by all Parties to this Agreement and that any oral agreements are not binding until reduced to writing and signed by the Parties to this Agreement.
11. Binding upon Successors and Assigns. The Parties to this Agreement agree that this Agreement is binding upon the Parties' respective successors and assigns.
12. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Photocopies or facsimile copies of executed copies of this Agreement may be treated as originals. A duly authorized attorney may sign on behalf of a corporate entity.
13. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.
14. Effective Date. This Agreement shall become effective immediately upon the execution by all of the parties listed below.

[SIGNATURE PAGES FOLLOW]

Executed this 28th day of Sept. by:

CleanAIRE NC

June Blotnick

June Blotnick
Executive Director

Executed this 24 day of September by:

North Carolina Department of Environmental Quality,
Division of Air Quality

Michael Abraczinskas, Director
Division of Air Quality

Executed this 27th day of September by:

Align RNG, LLC

Ryan W. Childress
Vice-President – Business Development

Exhibit A

Pursuant to the terms set forth in the Settlement Agreement, Align will request a modification of the Permit that contains only the following revisions (shown in bold):

Emission Source Table (pp.1-2)—The "Emission Source Description" for "ES-1 GUS / Scenario 2 Off-Specification Production / OS-2" on pages 1-2 of the Permit shall be revised as follows:

One Gas Upgrading System (ES-1 GUS) as described above; in Off-Specification Production operation, the product gas is directed to CD-4. The remaining biogas constituents (tail gas) are directed to CD-1, CD-2, and CD-3.
[removing reference to CD-4]

Condition A.3—revise as follows:

In accordance with G.S. 143-215.108(c)(1) - the maximum biogas feedstock flow into ***the Facility*** *shall be no greater than 1,200 standard cubic feet per minute (scfm)* ***on a 12-month rolling average basis****.* ***If the hourly average biogas feedstock flow to CD-4 is greater than 1,200 scfm, the Permittee shall calculate and report the H_2S emission rate from CD-4 in accordance with Specific Condition 11.f and g.***

Condition A.4.a. and b.—revise as follows:

a. Monitoring: The Permittee shall monitor: the tail gas H2S concentration (ppm) and flow rate (scfm) from the outlet of emission source (ES-I GUS), the tail gas flow rate (scfm) to the inlet of the iron sponge scrubbers (CD-I and CD-2), the H2S concentration (ppm) from the outlet of the iron sponge scrubbers, and calculate the flow (scfm) of the tail gas bypassing the iron sponges scrubbers (CD-1 and CD-2) once per hour for each day the ES-I GUS is in operation ***beginning within 30 days of initial operation of the facility****(see* ***Specific Condition 9****). The permittee shall also record the instantaneous natural gas flow rate to CD-3 (scfm) at the same time as the measurements above are taken.*

b. Recordkeeping: The Permittee shall record the tail gas H2S concentration (ppm) and tail gas flow rate (scfm) from the monitoring locations as defined in a. above. The Permittee shall record the calculated H2S concentration (ppm) and tail gas flow rate (scfm) of the tail gas bypassing the iron sponge scrubbers (CD-1 and CD-2) as defined in a., above. The Permittee shall record the calculated heat input rate (MMBtu/hr) to the enclosed hybrid flare (CD-3) using the tail gas flow rate (scfm) and natural gas flow rate (scfm) recorded from the monitoring locations as defined in a. above. Once per day when the facility is in operation, using the recorded and calculated values from the previous day as defined in this ***Specific Condition (4.b.)****, the Permittee shall calculate and record the daily average emission rate of sulfur dioxide per MMBtu input (in lb/MMBtu) for the enclosed hybrid flare (CD-3). Except for periods covered under ISA NCAC 2D .0535, if the emission rate of sulfur dioxide (lb/MMBtu) from CD-3 exceeds the limit defined in I*

SA NCAC 02D .0516, the Permittee shall be in violation of the permit. The Permittee shall use the following equations to calculate the emission rate of sulfur dioxide per MMBtu input (lb SO2/MMBtu) for the enclosed hybrid flare (CD-3): . . .

Condition A.4.c—revise as follows:

The Permittee shall notify the Regional Supervisor within five (5) business days if the daily emissions exceeds the 2.3 lbs SO2/MMBtu limitation. ***The daily average SO2 emissions rate in lbs/day and lbs SO2/MMBtu calculated in Condition A.4.b shall be reported semi-annually, as specified in Condition A.12****.*

Condition A.9.a—add:

> *(ii)* ***Hours of operation under Scenario 2 (Off-Specification Production) shall not exceed 360 hours per consecutive 12-month rolling period. Hours of operation under Scenario 3 (By-Pass Biogas) shall not exceed 240 hours per consecutive 12-month rolling period. These time limits do not include commissioning hours, defined as the period beginning with initial startup of equipment at the facility and ending no later than upon commencement of commercial operation (which is defined as the successful completion of the tests required by the receiving natural gas pipeline or sale of the RNG, whichever occurs first), during which the Permittee conducts operational and contractual testing and tuning to ensure the safe, efficient, and reliable operation of the plant. For each scenario, monthly total hours and total hours for the preceding 12 months shall be included in the Semi-Annual Reports, as specified in Condition A.12.***
>
> *(iii)* ***The maximum biogas feedstock flow into the Facility shall be no greater than 1,200 standard cubic feet per minute, as set out in Condition A.3.***

Condition A.9.c.i.C—revise as follows (should be renumbered to A.9.c.ii):

The H_2S concentration of the biogas feedstock shall be analyzed once per ***hour*** *beginning* ***within 30 days from initial operation*** *of the facility.* ***Within fifteen (15) days after commercial operation begins, the Permittee shall notify the Division of Air Quality in writing. After 3 years from the date commercial operation begins, the hourly monitoring requirement will automatically become a daily requirement unless the Department affirmatively concludes, within that 3 years, that hourly monitoring is necessary to demonstrate compliance with the facility-wide SO_2 limit of <100 tons per consecutive 12-month period.***

Condition A.9.d.i.B—revise last bullet as follows:

- ***Concentration*** *of H2S in Biogas bypassing the ES-1 GUS and entering the candlestick flare (CD-4)*

Condition A.9.d.ii—revise as follows:

*The Permittee shall record the concentration of hydrogen sulfide sampled **hourly** from the biogas. These hourly measurements shall be used for calculating sulfur dioxide emissions in **Condition 9.d.iii** below.*

ES-1 Scenario 3, By-Pass Operation, daily emissions:

*PPM_{BG} = measured **average daily** biogas H_2S concentration (ppm) divided by 10^6*

Condition A.9.d.iv—revise as follows:

*After **3 years from the date commercial operation begins**, based on demonstrated compliance with the permit, **the hourly monitoring and recordkeeping requirements will automatically become daily requirements unless the Department affirmatively concludes, within that 3 years, that hourly monitoring is necessary to demonstrate compliance with the facility-wide SO_2 limit of <100 tons per consecutive 12-month period. Within fifteen (15) days after commercial operation begins, the Permittee shall notify the Division of Air Quality in writing.***

Condition A.11.f—revise the first sentence as follows:

*In order to demonstrate compliance with the emission limit above, the Permittee shall calculate **and include in the Semi-Annual Report per Condition A.12** the daily facility wide emission rate (lbs/day) of hydrogen sulfide **whenever either of the following occurs:** CD-4 (candlestick flare) combusts biogas for more than 10 hours in a day, **or the hourly average flow of biogas feedstock to CD-4 exceeds 1,200 scfm.***

Condition A.11.g—revise as follows:

*Within 5 business days **of calculating the daily facility wide emission rate of hydrogen sulfide per Condition A.11.f above**, the results of the calculation shall be reported to the Division of Air Quality.*

Add new Section A.12:

Semi-Annual Reports: The Permittee shall submit to the Division of Air Quality a semi-annual summary report of monitoring and recordkeeping activities postmarked on or before January 30 of each calendar year for the preceding six-month period between July and December, and July 30 of each calendar year for the preceding six-month period between January and June. The report shall contain:

- ***Monthly total hours and total hours of operation for the preceding 12 months for Scenario 2; monthly total hours and total hours of operation for the preceding 12 months for Scenario 3 (condition A.9.a.ii);***

- ***Daily average SO2 emissions rate in lbs/day and lbs SO2/MMBtu for CD-3 (condition A.4.c);***
- ***Monthly and 12-month rolling total actual facility-wide SO2 emissions for the preceding 12 months (condition A.9.d.iii);***
- ***Daily SO2 emissions for Scenarios 1, 2, and 3 (condition A.9.d.iii);***
- ***Daily facility-wide H2S emission rate (lbs/day) for days when calculation is required (condition A.11.f);***
- ***H2S concentration of biogas feedstock (condition A.9.d.ii), expressed as monthly average and 12-month rolling average; and***
- ***Biogas feedstock flow (condition A.9.d.i.A), expressed as a daily average.***

Calculation of the consecutive 12-month periods shall begin upon start-up of the facility (biogas flowing into the Align RNG facility).

Add new section A.13:

General Monitoring Requirements

i. ***The monitoring systems for recording flow and hydrogen sulfide concentrations installed at various points in the process which are used to estimate emissions and demonstrate compliance shall be installed, calibrated, maintained, tested, and operated in accordance with manufacturer recommendations and in accordance with the approved inspection, maintenance, and calibration plan (see Specific Condition 9.b.viii)).***

ii. ***Monitor downtime: For each monitor required in this permit for estimating emissions and demonstrating compliance, the monitor downtime:***

(A) shall not exceed 5.0 percent of the operating time in a calendar quarter. Monitor downtime exceeding 5.0 percent shall require submission of the quarterly Monitor Downtime Report in iv. below.

(B)shall be calculated using the following equation:

$$\%MD = \left(\frac{\text{Monitor Downtime}}{\text{Source Operating Time}}\right) \times 100$$

Where:

"Monitor Downtime" is the number of hours in a calendar quarter where an emission source was operating but data from an associated monitor is invalid, not available, and/or or filled with missing data procedure excluding monitor downtime associated with QA/QC activities performed as part of the inspection, maintenance and calibration plan (Specific Condition 9.b.viii).

"Source Operating Time" is the number of hours in a calendar quarter where the emission source associated with the monitor(s) was operating.

"Calendar Quarter" is the three-month period between January and March, April and June, July and September, and September and December

iii. Missing Data Procedure: The following procedure shall be followed during monitor downtime as defined in (ii) above. The Permittee shall substitute for each hour of data missing either (A), (B), or (C) as appropriate:

- ***(A) value derived from mass balance if sufficient validated data are available from other monitors;***
- ***(B) the average of the hourly monitored value recorded by the appropriate monitor of the hour before and the hour after the missing data period; or***
- ***(C) if the hourly data for the hour preceding and following the hour of monitor downtime is not available, the maximum validated hourly monitor value from the most recent thirty days associated with the appropriate operating scenario for the monitor.***

The data substitution procedure shall be used whenever the emission unit is operating and monitoring downtime has occurred.

iv. Monitor Downtime Report:

- ***(A) The percent monitoring downtime shall be calculated and recorded within 30 days of the end of each quarter and records of that calculation shall be retained on-site for review by the DAQ.***
- ***(B) If the monitoring downtime in a quarter exceeds 5%, the permittee shall submit a report detailing each hour of monitor downtime and the reasoning for the downtime. The report shall clearly indicate periods of downtime associated with QA/QC activities performed as part of the Inspection Maintenance and Calibration Plan. Calculation of the % downtime associated with those QA/QC activities shall be summarized in the report. In addition, what actions are being taken to preclude recurrence of exceeding 5% downtime shall be proposed. This report shall be submitted within 30 days of the end of each quarter when required.***