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October 25, 2021

VIA EMAIL meiburgemc@gmail.com

Dr. Stanley Meiburg, Chairman
Environmental Management Commission

Re: Optima TH, LLC Request for Declaratory Ruling

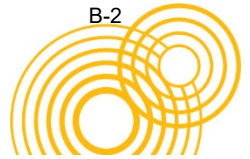
Dear Chairman Meiburg,

This letter is submitted on behalf of Optima TH, LLC (“Optima”) in response to the North Carolina Division of Air Quality’s (the “DAQ”) October 18, 2021 letter to you concerning allegations of factual disputes that may be material to the Environmental Management Commission (“Commission”) decision on whether to grant or deny Optima’s Request for a Declaratory Ruling (the “Request”) submitted to the Commission on September 29, 2021.

Optima’s Request is about the DAQ’s interpretation of the 2D.0516 (the “Rule”) being in material conflict with the stated purpose and plain language of the Rule itself. The DAQ’s alleged “disputed facts” are not necessary to the Commission’s declaratory ruling on whether the DAQ’s “interpretation” of the Rule is erroneous and inconsistent with the plain and unambiguous language of the Rule. The purpose of the Rule is to establish a maximum limit on the *rate* of SO₂ emissions.¹ The Rule does not include any of the restrictions interpreted by the DAQ on how to achieve compliance with that SO₂ limit. In direct conflict with the words of the Rule, the DAQ takes the position that the “BTU input” in the Rule requires Optima to only use a supplemental fuel source that is derived from the “gas streams associated with [Optima’s] operations” and prohibits the use of natural gas purchased from a public utility to increase the heating value to achieve compliance with 2D.0516.² The DAQ has not provided any citations of regulations or law to support their “interpretation,” “policy” or “position.” Optima is aggrieved because

¹ See 15A NCAC 2D .0502 (purpose of the Rule).

² See, Request, Ex. 7 (June 29, 2021 DAQ letter to Optima).



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the inconsistent restrictions imposed by the DAQ have economic impacts without environmental benefit and dictate operational decisions that go beyond the wording of the Rule. Optima will address the allegations of disputed facts in this letter; however, all that is needed to confirm that DAQ's stated interpretation of the Rule is erroneous and inconsistent is an examination of the stated purpose and plain language of the Rule itself.

A. DAQ's stated interpretation of 2D .0516 is inconsistent and erroneous, and a declaratory ruling on this interpretation is not dependent on the particular facts raised by the DAQ in its October 18, 2021 letter.

The DAQ permitted Optima's operation to use supplemental fuel, in the form of a biogas slip stream, for Optima's low-BTU waste gas (tailgas) for oxidation and to achieve compliance with 2D.0516.³ Thereafter, Optima requested to use a replacement fuel, natural gas purchased from a utility, as the supplemental fuel due to technical reasons. However, the DAQ made a value judgement, going beyond the plain language of the Rule, to prohibit the use of natural gas because the DAQ deemed natural gas was not an "appropriate" replacement fuel.⁴ The DAQ states "it is DAQ's interpretation that the "BTU input" referenced in 2D .0516 refers to the "BTU input associated with combustion of the gas stream associated with the Facility's normal operations and not an increase in BTUs generated through combustion of natural gas or propane purchased offsite to artificially raise the heat input of gas being combusted by the flare."⁵ This "interpretation" by the DAQ goes beyond the express language of the Rule.

The purpose of 2D.0516 is to establish maximum limits on the *rate* of SO₂ emissions.⁶ The Rule states:

15A NCAC 02D .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

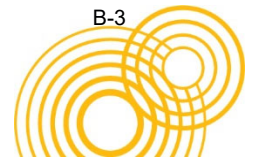
(a) Emission of sulfur dioxide from **any source of combustion** discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the **combustion of sulfur in fuels, wastes, ores, and other substances shall be included when**

³ See, Request at pp.5-6.

⁴ See, Request, Ex. 7 (June 29, 2021 DAQ letter to Optima).

⁵ *Id.* (emphasis added).

⁶ See, 15A NCAC 2D .0502



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determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) The standard set forth in Paragraph (a) of this Rule shall not apply to sulfur dioxide emission sources already subject to an emission standard for sulfur dioxide in 15A NCAC 02D .0524, .0527, .1110, .1111, .1206, or .1210. (emphasis added).

The Rule does not include any of the restrictions imposed by the DAQ on how to achieve compliance with the Rule's limit. In direct conflict with the Rule's language, the DAQ engrafts new requirements on the type and source of supplemental fuel for the "BTU input" in 2D.0516. The Commission can evaluate the DAQ's stated "interpretation" of 2D.0516 based on the plain language of the regulation.

B. The DAQ's Alleged Factual Disputes

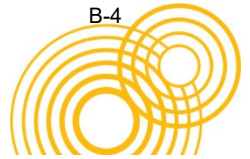
The specific factual "disputes" alleged by the DAQ do not prevent the Commission from granting Optima's Request.

1. DAQ's Implicated "Facts" About Align Are not in Optima's Request.

In addition to the DAQ's erroneous and inconsistent interpretation of the Rule, Optima's petition includes how the DAQ has inconsistently permitted one biogas operation to use natural gas as supplemental fuel and be counted toward the "BTU input" in the Rule, but not Optima. The DAQ letter tentatively suggests that "*to the extent* that Optima alleges that DAQ authorized Align RNG to combust natural gas for no legitimate business or control purpose but solely to demonstrate compliance with 2D .0516," the DAQ disputes this allegation. (emphasis added). Optima did not characterize Align's use of natural gas as supplemental fuel in this manner. The DAQ issued a permit to Align approving the use of supplemental fuel in the form of natural gas and that such natural gas would be counted toward the BTU heat input to determine compliance with 2D.0516.⁷ Optima also requested the use of supplemental fuel, in the form of natural gas, to oxidize tail gas constituents and achieve compliance with the Rule.⁸ The purpose of presenting these facts in the record is to demonstrate that the DEQ interprets 2D.0516 to not

⁷ See, Request at p. 13.

⁸ See Request, Ex. 6, July 28, 2021 Notice update letter to DAQ and Attachments (at Calculations Page 5); Ex. 3, July 28, 2021 Title V permit application at Calculations Page 5 (supplemental fuel needed to raise the "BTU" input in the flare from 137 BTU/scf to a minimum net heating value of 200 BTU/scf to meet its permit requirement and to achieve compliance with the Rule).



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allow Optima to use natural gas as supplemental fuel but allows another biogas operation to use natural gas as supplemental fuel in order to calculate the “BTU” input for 2D.0516. The Rule on its face contains only a limit of the amount of pounds of sulfur dioxide per million BTU and does not dictate how an operation must achieve compliance with 2D.0516. Further, there are no other air quality regulations that require application of specific control technologies, like sulfur removal as requested by the DAQ.

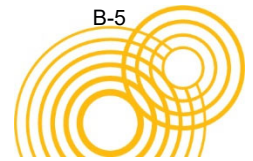
2. Optima has consistently shown the technical and economic bases for the need to use natural gas as supplemental fuel and this information was provided to the DAQ and included in this Request.

The DAQ states it is unclear whether Optima continues to maintain that operating in compliance with its current permit is not technically feasible or whether Optima does not wish to do so for economic reasons. The DAQ states Optima has failed to provide any documentation in support of these claims. This is not accurate.

Optima’s Request explicitly states that Optima’s only technically and economically feasible option to comply with 2D .0516 is to use supplemental fuel in the form of natural gas along with potentially a small amount of product gas.⁹ Optima has consistently maintained this position since first informing the DEQ in a letter dated May 25, 2021, prior to the June 2, 2021 virtual meeting as noted in DAQ’s Response, that using a portion of the existing biogas will “irreversibly damage Optima’s GUS, and it is not technically nor economically feasible.”¹⁰ Optima reiterated this position in its July 28, 2021 correspondence to Ms. Heather Carter and in Optima’s signed Title V permit application submitted to the DAQ on July 30, 2021. The record is not unclear on this issue as suggested by the DAQ. Further, these facts show context and one of several reasons of how Optima is an aggrieved person by the DAQ’s erroneous interpretation of 2D.0516 and the consequences of the Commission not issuing a declaratory ruling. In any event, this is not an unsupported factual issue, based on the record, and does not prevent the Commission from granting Optima’s Request.

⁹ See, Request at p.16.

¹⁰ See, Request, Ex. 2 at p.2.



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3. The DAQ's dispute of the economics for installation of sulfur control technology is not material to this Request.

The DAQ raises an evidentiary dispute regarding Optima's evaluation of the installation of sulfur control technology. Optima disagrees and this issue is not material to the Commission's declaratory ruling that the DAQ's stated interpretation of the Rule is inconsistent and erroneous. Whether Optima can or should install sulfur control technology is not a material fact to this Request as it is not required by the Rule or other air quality regulations, nor is it needed.¹¹ As stated in the Request, the DAQ-conducted air dispersion modeling of SO₂ emissions from the flare using a worst case, "unrealistic" potential SO₂ emission rate, and assuming the use of supplemental biogas, demonstrated the resulting maximum concentration was only 22.2% of the controlling SO₂ 1-HR NAAQS. Optima's Request included this factual issue because it gives the Commission insight into DAQ's interpretation of the Rule requiring a biogas operation to either burn its product (gas) or install a sulfur control technology – both of which are inconsistent with the regulations.

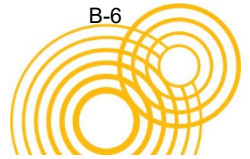
4. Natural Gas as a substitute supplemental fuel for the permitted slip stream of biogas will not increase the emissions from the flare provided context but not material to the Commission's decision to grant this Request.

The DAQ claims Optima's statement that use of natural gas as a substitute supplemental fuel will reduce SO₂ emissions is unsupported. The DAQ is incorrect. Optima's statement is supported by engineering calculations previously submitted to the DAQ. The July 28, 2021 notice letter to the DAQ regarding updates to Optima's operation showed, with supporting calculated emission rates in the letter and attached emissions calculations, that the SO₂ and CO₂ emission rates are lower if natural gas is used as supplemental fuel compared to using the slip stream of biogas.¹² These same calculations were provided to the DAQ in the Title V air application submitted on July 30, 2021.¹³ This factual issue was provided to

¹¹ See, Request at pp.10 and16.

¹² Request at pp. 6-7; Request, Ex. 6 (the Exhibit 6 initially filed with the Commission inadvertently left off the letter's attachments. A complete Exhibit 6 of the July 28, 2021 notice letter and attachments is attached hereto and filed with Recording Clerk).

¹³ See, Request, Ex. 3.



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the Commission because it responds to the DAQ's ancillary argument that use of natural gas as supplement fuel does not reduce emissions.¹⁴ It is not material to the Commission's ruling on whether the DAQ's "interpretation" of the Rule is inconsistent with the plain language of the Rule.

Optima respectfully submits that a material conflict exists between DAQ's interpretation of the Rule and the stated purpose and plain language of the rule, and thus Optima's Request should be granted. The factual issues raised by the DAQ in its letter do not prevent the Commission from granting Optima's Request. Optima reserves its right to make additional responses to any further submissions by the DAQ.

Sincerely,

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Optima TH, LLC

Attachment: Exhibit 6 (July 28, 2021 Optima notice letter to DAQ) (to replace previously filed Exhibit 6 to the Request).

¹⁴ Request, Ex. 7 (June 29, 2021 DAQ letter at p. 3).