COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO INGENCO WHOLESALE POWER, LLC FOR ITS DUBLIN, VA FACILITY Registration No. 21548

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and INGENCO Wholesale Power, LLC, regarding its Dublin, Virginia facility, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.

2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the INGENCO facility, located at 7100 Cloyd's Mountain Road, Dublin, VA, which is a landfill gas-to-electricity generation plant.

6. "INGENCO" means INGENCO Wholesale Power, LLC a wholly owned subsidiary of Castleton Commodities International LLC, and a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. INGENCO is a "person" within the meaning of Va. Code § 10.1-1300.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

9. "Permit" means a New Source Review (NSR) permit to operate and construct a 'landfill gas to energy' facility. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to INGENCO on March 29, 2013. The Permit contains conditions and enumerates emission limitations on the air emissions from the Facility. The Permit includes designated equipment subject to National Emission Standards for Hazardous Air Pollutants for Source Categories. The Facility is a major source of carbon monoxide (CO).

10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

11. "Va. Code" means the Code of Virginia (1950), as amended.

12. "VAC" means the Virginia Administrative Code.

13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. INGENCO owns and operates the Facility in Dublin, Virginia. The Facility is the subject of the Permit which allows air emissions related to the production of electric power from landfill gas.

2. INGENCO conducted a stack test on June 30, 2015, as required by the Permit. On September 8, 2015, INGENCO submitted the results of the stack test to the Department.

3. On September 9, 2015, Department staff conducted a Partial Compliance Evaluation ("PCE") of the submittal and noted the following factual observation.

i) The stack test data indicated that that the emission rate of pollutant CO was 3.48 lbs/hr per engine while operating in Mode 2.
ii) Condition 14 of the Permit limits the emission rate of pollutant CO to 3.0 lbs/hr per engine while operating in Mode 2.

4. On October 5, 2015, based on the September 9, 2015 PCE, the Department issued Notice of Violation No. ABRRO000276 to INGENCO for the violation described in paragraph C(3), above.

5. Based on the September 9, 2015 PCE, the Board concludes that INGENCO has violated Condition #14 of the Permit, as described in paragraph C(3), above.

6. INGENCO conducted a second stack test on October 20, 2015, as required by the Permit and on November 6, 2015, INGENCO submitted the results of the stack test to the Department.

7. On November 18, 2015, Department staff conducted a PCE of the submittal and noted that INGENCO had demonstrated compliance with the emission limit with this second stack test. This documented and verified that the violation described in paragraph C(3), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders INGENCO, and INGENCO agrees to pay a civil charge of **$7,427** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

INGENCO shall include its Federal Employer Identification Number (FEIN) (05-0565958) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, INGENCO shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of INGENCO for good cause shown by INGENCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, INGENCO admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. INGENCO declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and INGENCO. Nevertheless, INGENCO agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after INGENCO has completed all of the requirements of the Order;

    b. INGENCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to INGENCO.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by INGENCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of INGENCO certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and

legally bind INGENCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of INGENCO.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, INGENCO Wholesale Power, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of March, 2016.

Robert J. Weld, Regional Director
Department of Environmental Quality

INGENCO Renewable Development, LLC voluntarily agrees to the issuance of this Order.

Date: 3/21/16 By: _____, Senior Vice President
Brad Burmaster
INGENCO Wholesale Power, LLC

State of Texas
County of Harris

The foregoing document was signed and acknowledged before me this 21st day of March, 2016, by Brad Burmaster who is Senior Vice President of INGENCO Wholesale Power, LLC, on behalf of the company.

Allison Boudreaux
Notary Public

ALLISON BOUDREAUX
Notary Public, State of Texas
Comm. Expires 02-02-2019
Notary ID 13009934-7

13009934-7
Registration No.

My commission expires: 2/2/2019

Notary seal: