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SOUTH COAST AQMD
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10 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

11
12 BEFORE THE HEARING BOARD OF THE
13
14 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
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16 **In the Matter of**
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18 SOUTH COAST AIR QUALITY
19 MANAGEMENT DISTRICT,
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CASE NO. 6143-4

**PETITION FOR AN ORDER FOR
ABATEMENT
District Rules 431.1, 3002(c)(1), 203(b)**

Date: February 8, 2024
Time: 9:30 a.m.
Place: Hearing Board
South Coast AQMD
21865 Copley Drive
Diamond Bar, CA 91765

19 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (hereinafter referred to as
20 "South Coast AQMD" or "Petitioner") petitions the South Coast AQMD Hearing Board for an
21 Order for Abatement directed to Respondent AMERESCO CHIQUITA ENERGY, LLC
22 (hereinafter referred to as "Respondent" or "Ameresco") regarding the exceedance of total sulfur
23 in landfill gas used by Ameresco and the exceedance of oxides of sulfur (SO2) limits from its
24 turbines and flare.

25 The South Coast AQMD alleges as follows:

26 1. Petitioner is a body corporate and politic established and existing pursuant to
27 Health and Safety Code §§ 40000, *et seq.* and §§ 40400, *et seq.*, and is the sole and exclusive local
28 agency with the responsibility for comprehensive air pollution control in the South Coast Basin.

1 2. Respondent owns and operates a landfill gas-to-energy facility (“facility”), which
2 generates electricity using landfill gas, located at 29201 Henry Mayo Drive, Valencia, CA 91355.
3 Respondent’s facility is co-located with a municipal solid waste disposal site (“the landfill”),
4 which is owned and operated by a third party, not under common control with Respondent.
5 Respondent’s facility is located within the South Coast Air Basin and is subject to the jurisdiction
6 of the South Coast AQMD.

7 3. Respondent’s facility consists of, among other things, two landfill gas (“LFG”)
8 fueled turbine-generators and a LFG/waste gas flare for LFG treatment system. Each of these are
9 permitted by the South Coast AQMD. Turbine-generator #1 operates under Permit No. **G25211**;
10 turbine-generator #2 operates under Permit No. **G25212**; LFG/waste gas flare operates under
11 Permit No. **G23448**. The facility is also holds a Title V Permit.

12 4. **South Coast AQMD Rule 431.1(c)(2) and Respondent’s Title V Permit,**
13 **Facility Wide Condition 3** prohibit burning LFG with sulfur content greater than 150 parts per
14 million (“ppm”) averaged daily.

15 5. **Permit Nos. G25211 (Condition Nos. 11, 24) and G25212 (Condition Nos. 11,**
16 **24)** require compliance with South Coast AQMD Rule 431.1 and the LFG sulfur content
17 maximum of 150 ppm averaged daily.

18 6. **Permit Nos. G25211 (Condition No. 21) and G25212 (Condition No. 21)** limit
19 emissions from turbine #1 (G25211) and turbine #2 (G25212) each to 32 pounds per day of SOx
20 as SO2.

21 7. **Permit No. G23448, Condition No. 13** limits emissions from the flare to 14
22 pounds per day of SOx as SO2.

23 8. **South Coast AQMD Rules 203(b) and 3002(c)(1)** require compliance with all
24 applicable permit conditions at all times.

25 9. Respondent currently operates under a Regular Variance (Case No. 6143-2), which
26 allows excess sulfur in both the incoming LFG and emitted by both turbine-generators and the
27 flare. The Hearing Board granted Respondent this variance, initially as an Interim Variance,
28

1 beginning on February 15, 2023. The Hearing Board granted the Regular Variance on May 3,
2 2023 and set a final compliance date of February 8, 2024.

3 10. The Hearing Board, in granting Respondent the current variance, found that “[a]s a
4 result of the ongoing reaction occurring in the landfill, the landfill gas that the landfill [] is
5 providing Ameresco has sulfur concentrations that regularly exceed 150 [parts per million].”
6 (Findings and Decision Granting a Regular Variance, p. 3, ¶ 2, Case No. 6143-2.) The Hearing
7 Board further found that “[a]s a result of the ongoing reaction occurring at the landfill, Ameresco
8 cannot continuously meet the permitted mass SOx emission limits, and mass SOx emissions have
9 regularly exceeded the limits since February 2023[.]” (*Id.* at p. 3, ¶ 3.) While considering granting
10 a variance to the landfill, evidence of which was incorporated by reference into the Regular
11 Variance hearing for Respondent, the Hearing Board found that “reactions are taking place within
12 the landfill that is either producing dimethyl sulfide or is causing hydrogen sulfide to be converted
13 into dimethyl sulfide.” (Findings and Decision Granting a Regular Variance, p. 4, ¶ 7, Case No.
14 6177-3.)

15 11. **California Health and Safety Code Section 42358(b)** allows a variance to extend
16 for longer than one calendar year only if the variance “includes a schedule of increments of
17 progress specifying a final compliance date by which the air contaminants of a source for which
18 the variance is granted will be brought into compliance with applicable emission standards.”

19 12. On December 26, 2023, Respondent petitioned the Hearing Board for a
20 modification of its variance to change its final compliance date. (Modification Petition, at p. 1
21 ¶1(a).) In its Modification Petition, Respondent states that it expects to achieve final compliance
22 by February 8, 2025. (*Id.* at p. 5, ¶ 9.) However, the Modification Petition also admits that
23 “because Ameresco neither owns nor operates the [l]andfill, Ameresco is unable to take direct
24 actions in the [l]andfill subsurface that will allow it to achieve compliance[.]” (*Id.* at p. 3, ¶ 5.)

25 13. Information available to the South Coast AQMD, including evidence from the
26 ongoing Order for Abatement for the landfill (Case No. 6177-4), leads to the District’s
27 concurrence with Ameresco that there are no direct actions Ameresco could take that would
28 resolve the underlying cause of Ameresco’s non-compliance with District Rules and its permit

1 conditions. Moreover, the District is not able to state with any level of certainty that the
2 underlying cause of Ameresco's non-compliance (the reaction at the landfill) will be fully abated
3 on or before February 8, 2025. Thus, the District believes that neither a schedule of increments of
4 progress nor a final compliance date may be set for Ameresco regarding the modification petition.

5 14. Because neither increments of progress nor a final compliance date can be set in
6 this matter, the District anticipates opposing Respondent's Modification of a Regular Variance
7 (Case No. 61243-2) as granting such a modification would be prohibited by California Health and
8 Safety Code Section 42358(b).

9 15. South Coast AQMD submits this Petition for an Order for Abatement to address
10 Respondent's noncompliance with District Rules and its permit conditions following expiration of
11 the regular variance if the Hearing Board does not grant the modification request. South Coast
12 AQMD requests this petition be heard the same day (February 8, 2024) as Respondent's
13 Modification Petition, to assure there is no lapse in coverage for Respondent's non-compliance.

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Request for Order for Abatement

16 16. South Coast AQMD by this Petition seeks an Order for Abatement to require
17 Respondent to cease operations in non-compliance with the District Rules and Permit Conditions
18 cited above, or in the alternative to comply with such conditions as determined necessary to
19 monitor, report, and limit excess emissions.

20 17. It is not unreasonable to require Respondent to comply with South Coast AQMD
21 rules and regulations, including those listed in this Petition.

22 18. The issuance of an Order for Abatement upon a fully noticed hearing would not
23 constitute a taking of property without due process of law.

24 19. The petitioned-for Order for Abatement is not intended to be, nor would it, act as
25 variance.

26 20. The issuance of the requested Order for Abatement is not expected to result in the
27 closing or elimination of an otherwise lawful business, but if it does result in such closure or
28 elimination, it would not be without a corresponding benefit in reducing air contaminants.

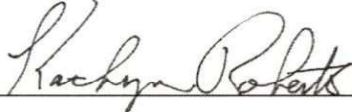
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THEREFORE, the South Coast AQMD prays for an Order for Abatement as follows:

- 1. That this Hearing Board issue an Order for Abatement requiring Respondent to cease and desist from operating in violation of South Coast AQMD Rules and Permits issued to Respondent, or, in the alternative, to comply with such conditions as the Board deems appropriate.
- 2. For such other and further relief that this Board deems just and proper.

Dated: January 9, 2024

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
OFFICE OF THE GENERAL COUNSEL
Kathryn Roberts, Senior Deputy District Counsel

By 
KATHRYN ROBERTS
Attorney for Petitioner