



# DAVE YOST

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## Fax Cover

To: Greene County Common Pleas Court,  
via Greene County Clerk of Courts      From: Jack McManus, Attorney 0037140  
(866) 594-1594

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Fax: (937) 562-5309      Pages: 16 (including cover)

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Phone: (937) 562-5282      Date: 9/20/2023

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*State of Ohio ex rel. Dave Yost, Ohio Attorney  
General v. Reenergy, Inc., et al.  
Case No.: 2022-cv-0201*

Re: Judge Langer      cc:

***Joint Motion to Amend Consent  
Order and Final Judgment Entry***

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Urgent       For Filing       Please Comment       Please Reply       Please Recycle

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Dear Clerk,

Enclosed for fax filing, please find the ***Joint Motion to Amend Consent Order and Final Judgment Entry*** which includes with it the ***Amended Consent Order and Final Judgment Entry*** in the above-captioned case.

In addition to filing these documents, we ask that you scan and email to me a timestamped copy of the motion, and then forward these documents to the judge for consideration. If you have any questions, please feel free to contact me directly at (614) 466-2766 or [Jack.McManus@OhioAGO.gov](mailto:Jack.McManus@OhioAGO.gov)

Very truly yours,

***Jack McManus***

Jack McManus  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215



Respectfully submitted,

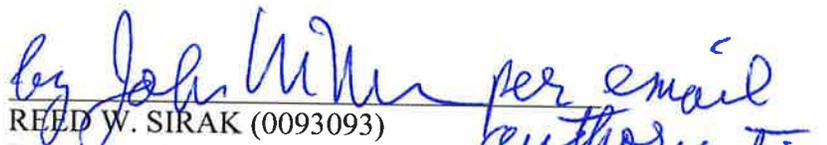
DAVE YOST  
OHIO ATTORNEY GENERAL



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Counsel for Plaintiff, State of Ohio



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REED W. SIRAK (0093093) *per email authorization*  
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Counsel for Defendants Renergy Inc.  
and Dovetail Energy, LLC



the Complaint, as well as the Notice of Violation recently issued by the Ohio Environmental Protection Agency.

The April 2022 Consent Order remains in full effect until the Court signs and enters the Amended Consent Order. The Parties have consented to the entry of this Amended Consent Order.

Therefore, without the trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, and DECREED:

### **I. DEFINITIONS**

1. As used in this Order, the following terms are defined:
  - a. “Defendants” mean Renergy Inc. and Dovetail Energy, LLC.
  - b. “Digester Effluent Storage Tank” means the open surface concrete tank located at the Facility where the digestate slurry effluent from the biodigester process is stored prior to land application or other disposal.
  - c. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or the Director’s designee.
  - d. “Facility” and/or “Site” means the anaerobic biodigester facility located at 1156 Herr Road, Fairborn, Greene County, Ohio.
  - e. “NPDES Permit” means National Pollutant Discharge Elimination System (“NPDES”) Permit No. 1IN00305\*AD issued to Dovetail Energy, LLC.
  - f. “Order” or “Consent Order” refers to this Amended Consent Order.
  - g. “Parties” mean Plaintiff, the State of Ohio, and Defendants.
  - h. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof,

public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

- i. “RAPCA” means the Regional Air Pollution Control Agency.
- j. “State” means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
- k. “Steamtown Facility” means the operation located at or near 2133 Township Road 224, Peru Township, Morrow County, Ohio.
- l. “Written” means either a paper copy or a saved or stored electronic copy.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3704. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendants shall not challenge the Court’s jurisdiction to enter or enforce this Consent Order.

## **III. PARTIES BOUND**

- 3. Defendant Renergy Inc. is an Ohio corporation registered and licensed to do business in Ohio.
- 4. The Statutory Agent for Defendant Renergy Inc. is Alexander Ringler, 461 Sr 61, Marengo, Ohio 43334.
- 5. Defendant Dovetail Energy, LLC is an Ohio limited liability company registered and licensed to do business in Ohio.
- 6. The Statutory Agent for Defendant Dovetail Energy, LLC is CH&K Agent Service,

Inc., 1 South Main Street, Suite 1300, Dayton, Ohio 45402.

7. Defendants Renergy Inc. and Dovetail Energy, LLC (“Defendants”) own and operate the anaerobic biodigester facility located at 1156 Herr Road, Fairborn, Greene County, Ohio 45324.

8. This Order shall apply to and be binding only upon Defendants, and, to the extent consistent with Civ.R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise.

9. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability. Nothing in this Order constitutes an admission or evidence of, or shall be treated as an admission or evidence of, any violation of law in any other litigation or forum by Defendants, their officers, employees, or representatives.

10. Defendants are jointly and severally liable for the civil penalty assessed in this Order. If insolvency, bankruptcy, or other failure of any Defendant occurs, Defendants Dovetail Energy, LLC and Renergy Inc. must pay the remaining unpaid balance of the total civil penalty.

#### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

11. The State alleges that Defendants are responsible for violations of air pollution control laws of the State of Ohio under R.C. Chapter 3704 and the rules adopted thereunder. Defendants deny all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants to the State for the claims alleged in the State’s Complaint and in the August 3, 2023 Ohio EPA Notice of Violation letter issued to Alex Ringler

and Dovetail Energy, LLC.

12. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State to:

- a. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State has the authority to enforce.

13. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State or other persons may have against Defendants.

14. Except for the signatories to the Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

15. Nothing in this Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, ordinances, or orders.

16. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain any defense or claim of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that the State's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

17. Defendants agree that they are liable for the obligations and requirements in this Order.

#### **V. PERMANENT INJUNCTION**

18. Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 3704 and the rules adopted thereunder, and Defendants shall comply with the terms and conditions of all permits and orders issued by Ohio EPA.

19. On or before October 1, 2023, Defendants are hereby enjoined and ordered to stop accepting feedstock at the Facility.

20. By December 15, 2023, or such later date agreed to by the Parties, in writing, due to low air temperatures or adverse weather conditions, Defendants are hereby enjoined and ordered to:

- a. Treat all feedstock in accordance with the NPDES Permit and remove all treated digestate from the Digester Effluent Storage Tank.
- b. Defendants may dispose of treated digestate from the Facility via the following methods:
  - i. Land application, pursuant to the requirements of the NPDES Permit, or

any renewals or modifications thereof or another permit issued by Ohio EPA and authorizing land application, and in accordance with Ohio Adm.Code 3745-40;

- ii. Transferring treated digestate to the Steamtown Facility. Treated digestate may only be transferred to the Steamtown Facility if no more than 37,778 gallons per day of treated digestate are sent to the Steamtown Facility and both the North and South lagoons are below applicable freeboard, as provided in Paragraph 18 of the June 21, 2022 Partial Consent Order for Preliminary Injunction filed in the Morrow County Court of Common Pleas Case No. 2022-cv-00060;
- iii. Transferring digestate to another NPDES permitted facility. Defendants shall notify Ohio EPA of the NPDES permitted facility where the material is being shipped.

21. By January 15, 2024, or such later date agreed to by the Parties, in writing, due to low air temperatures or adverse weather conditions, Defendants are hereby enjoined and ordered to:

- a. Remove any remaining material from all tanks and associated equipment, including the anaerobic digester, such that all equipment at the Facility is completely emptied.
- b. Dispose of any untreated material remaining in any tank or associated equipment at a facility permitted to accept this material. Defendants shall notify Ohio EPA of the permitted facility where the material is being disposed.

22. Within fourteen (14) days of the deadline in the preceding paragraph, Defendants are

hereby enjoined and ordered to complete the following actions and submit to Ohio EPA and RAPCA, for their approval, documentation demonstrating that tanks, including the Digester Effluent Storage Tank, feedstock receiving tank, feedstock blending tank, anaerobic digester, and associated equipment at the Dovetail Facility have been flushed out and cleaned out, and no residual feedstock or digestate materials remains in the tanks and the associated equipment or otherwise onsite at the Facility.

23. By January 31, 2024, Defendants are hereby enjoined and ordered to complete the following actions and identify a responsible official of the Facility to notify the Ohio EPA, in writing, that (1) all operations at the location have permanently shut down, (2) the owner/operator is no longer conducting business at the location, and (3) the air and water permits can be terminated and such requests for termination have been sent to Ohio EPA for review. In addition, Defendants must submit a Non-Title V Fee Emission Report (“FER”) and Permit Evaluation Report (“PER”) to Ohio EPA for the days of operation during 2023 prior to shut down.

## **VI. CIVIL PENALTY**

24. Under R.C. 3704.06, Defendants are ordered to pay a total civil penalty of \$100,000 subject to the provisions in this Order. The civil penalty set forth in this Paragraph will be held in abeyance provided that Defendants comply fully with each requirement of Paragraphs 18 through 23 above. As security for payment of the civil penalty, Defendants shall provide a bond, letter of credit, escrow agreement, cash collateral or other method of security acceptable to the Ohio Attorney General’s Office. The proposed form of the security document shall be presented by Defendants to undersigned counsel for the State within fifteen (15) days of entry of this Order. Upon written approval of the form from counsel for the State, Defendants shall execute the security

document and deliver it to counsel for the State within five (5) business days. If Defendants fail to complete the security document and all associated transactions within thirty (30) days of the entry of this Order, Defendants shall pay the civil penalty of \$100,000 within thirty (30) days of any written notice from the State of such failure.

25. If Defendants fail to comply fully with any requirement of Paragraphs 18 through 23 above, Defendants shall pay the civil penalty of \$100,000 within 30 days of any written notice from the State of such failure, unless the State executes the security interest established pursuant to Paragraph 24 before or within 30 days of any written notice from the State of such failure. Such payment shall be made by delivering to Hannah Smith, Paralegal, or her successor, Office of the Ohio Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

26. If the full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance and any delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order. Failure to pay the civil penalty in accordance with the terms of this Consent Order subjects Defendants to stipulated penalties as set forth in Section VII below.

27. If any amount is not paid in accordance with the terms of this Consent Order, the Ohio Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten (10) percent shall be owing and fully recoverable from Defendants to be paid into the State Treasury to

the credit of the Attorney General Claims Fund.

28. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

#### **VII. STIPULATED PENALTIES**

29. If Defendants fail to comply with any of the requirements of this Consent Order, Defendants shall immediately and automatically be jointly and severally liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendants shall pay \$300 per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendants shall pay \$600 per day;
- c. For each day any requirement of this Order is violated, greater than ninety (90) days of violation, Defendants shall pay \$1,000 per day.

30. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to “Treasurer, State of Ohio” and delivered to Hannah Smith, Paralegal, or her successor, at the Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

31. Defendants’ payment and the State’s acceptance of such stipulated penalties under this Section shall not be construed to limit the State’s authority, without exception, to seek: 1)

additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

#### **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

32. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any private, federal or state grants, loans, and/or funds. In addition, Defendants' performance is not excused by failing to obtain or any shortfall of any private, federal or state grants, loans, and/or funds or by the processing of any applications for the same.

#### **IX. EFFECT OF CONSENT ORDER**

33. This Consent Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

#### **X. MODIFICATION**

34. No modification shall be made to this Order without written agreement of the Parties and the Court.

#### **XI. MISCELLANEOUS**

35. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants of the obligations created by this Consent Order.

36. Defendants shall inform Ohio EPA of any change in Registered Agents' addresses and business addresses or telephone numbers, the cessation of the business that is the subject of this action, or if a business that is subject to this action is acquired by another entity.

## **XII. RETENTION OF JURISDICTION**

37. This Court shall retain jurisdiction of this action for the purpose of administering and enforcing this Order.

## **XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

38. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity or effectiveness of this Order.

## **XIV. EFFECTIVE DATE**

39. This Consent Order shall be effective upon the date of its entry by the Court.

## **XV. COURT COSTS**

40. Defendants are ordered to pay all court costs of this action.

## **XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

41. Each signatory represents and warrants he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions.

**IT IS SO ORDERED.**

\_\_\_\_\_  
**JUDGE**

\_\_\_\_\_  
**DATE**

**APPROVED AND AGREED TO BY:**



**Reed W. Sirak (0093093)**  
**Kevin Margolis (0042043)**  
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**Alexander Ringler**  
*Authorized Representative of Renergy  
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*Authorized Representative of Dovetail Energy,  
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