

SENT VIA EMAIL

August 26, 2021

Elizabeth Biser, Secretary
N.C. Department of Environmental Quality
217 W. Jones Street
Raleigh, N.C. 27603

Dear Secretary Biser:

The Environmental Justice and Equity Advisory Board (EJE) was created to bridge the gap between the Department of Environmental Quality (DEQ) and the communities of North Carolina. The EJE Advisory Board's primary charge is to advise you as the Secretary and assist DEQ in achieving fair and equal treatment as well as meaningful involvement of all North Carolinians--regardless of race, color, national origin, or income--in the development, implementation and enforcement of environmental laws, regulations and policies. Our shared goal is to mitigate adverse impacts of environmental policymaking on communities burdened disproportionately by environmental harms.

For some time now the EJE Advisory Board has been aware of the environmental concerns regarding concentrated animal feeding operations (CAFOs). With the enactment of the 2021 North Carolina Farm Act (SL 2021-78), the EJE Advisory Board has become more aware of the fact that placement of anaerobic digester systems will further exacerbate conditions for residents living near swine CAFOs. This is a critical environmental justice concern because the harm caused by swine waste mismanagement is disproportionately borne by Black, Latino, and Native American residents of North Carolina.^{1, 2} Multiple studies have shown that living near CAFOs adversely affects the health and quality of life of fellow North Carolinians.^{3, 4, 5, 6} We, as the EJE Advisory Board, cannot remain silent considering these facts.

¹ Steve Wing & Jill Johnston, *Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians* (2014), <https://www.ncpolicywatch.com/wp-content/uploads/2014/09/UNC-Report.pdf>.

² Paul B. Stretesky et al., *Environmental Inequity: An Analysis of Large-Scale Hog Operations in 17 States, 1982-1997*, 68 *Rural Soc.* 231 (2003) (finding that between 1982 and 1997 large-scale hog operations in North Carolina were more likely to be sited in areas with disproportionate number of black residents),

³ Steve Wing et al., *Environmental Injustice in North Carolina's Hog Industry*, 108 *Envtl. Health Perspectives* 225, 228 (2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637958/pdf/envhper00304-0081.pdf>.

⁴ Steve Wing & S. Wolf, *Intensive Livestock Operations, Health, and Quality of Life Among Eastern North Carolina Residents*, 108 *Env't Health Perspectives* 233, 233 (Mar. 2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637983>.

⁵ Michael Greger & Gowni Koneswaran, *The Public Health Impacts of Concentrated Animal Feeding Operations on Local Communities*, 33 *Family & Community Health* 11, 13 (2010), <https://www.humanesociety.org/sites/default/files/docs/public-impacts-factory-farms-on-communities.pdf>.

⁶ Wendee Nicole, *CAFOs and Environmental Justice: The Case of North Carolina*, 121 *Envtl. Health Perspectives* A182, A 186 (2013), ("Even without spills, ammonia and nitrates may seep into groundwater, especially in the

Further, we have heard and shared the public's concerns about biogas and the development of a general permit that will allow CAFOs to install anaerobic digesters under one-size-fits all conditions.⁷ Production of biogas must not be allowed to exacerbate known harms caused by lagoon and sprayfield systems, which are disproportionately borne by vulnerable North Carolinians.⁸ And the permitting process must take into account local realities such as community demographics, environmental and health risks, and the cumulative impacts of other DEQ-permitted activities in the vicinity.

Moreover, with regard to Biogas systems, such as those recently proposed and permitted, far better waste treatment and disposal alternatives exist, which do far less harm to the environment. Other states have required the industry to use such superior waste management technology. DEQ should do the same to protect its citizens.

DEQ is now tasked with developing permit conditions for a new general permit that would authorize the construction and operation of farm digester systems to generate biogas. While DEQ has advised members of the General Assembly that it has the authority to further scrutinize any applicant/application perceived to present a danger to community, it has failed thus far to exercise that authority to protect impacted North Carolinians. For instance, the four individual biogas permits approved earlier this year do not require any regular air or water monitoring to assess the nature or volume of any emissions or discharges or the impact thereof on public health or the local environment. DEQ must take the steps necessary, during the process of developing and issuing coverage under this general permit, to assure that there is adequate and meaningful public participation such that the issues raised here are appropriately understood, evaluated, and addressed by the agency.

DEQ cannot assure that the protection afforded under the permit is adequate if it fails to provide sufficient opportunities for participation of affected communities to inform the permit conditions. DEQ staff may inspect permitted facilities once a year, but neighbors bear witness to permitted operations on a daily basis. This lived experience can help inform permit conditions and the scrutiny of permit applications, but only if community input is solicited and considered by DEQ permitting staff. Past efforts have failed to be inclusive of all affected community members. That should not be the case in this instance; DEQ has ample time to develop and implement an inclusive process. As recognized in DEQ's public participation plan and limited English proficiency plan, where additional steps are needed to assure participation, then DEQ should take them to give the public meaningful opportunity to comment before the agency develops the proposed permit.

The hope of the EJE Advisory Board is that no affected community is left out of the conversation due to a lack of access to dependable broadband service, especially in light of the digital divide

coastal plain where the water table is near the surface.”),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3672924/>.

⁷ Phoebe Gittelsohn, et al., *The False Promises of Biogas: Why Biogas is an Environmental Justice Issue*, *Environmental Justice* 3 (2021), <https://www.liebertpub.com/doi/pdf/10.1089/env.2021.0025>.

⁸ DEQ Environmental Justice Report, *Swine Farm Modifications 3* (Dec. 22, 2020) (noting that, of four biogas projects under consideration, one would cover a single lagoon but retain uncovered lagoons, while 3 would excavate new lagoons and still retain/use existing uncovered lagoons to manage waste).

acknowledged by the Cooper Administration in the creation of the new Office of Digital Equity and Literacy. Considering the limited access by impacted community members to online fora, meaningful engagement can only be accomplished by conducting face-to-face meetings. Using WebEx or some other virtual platform is not an adequate substitute.

In developing this permit, DEQ should consider both the procedural and the substantive process. This advisory statement is intended to address the concerns that the Board has about the process for engaging the impacted communities. That process should be open and transparent at all times. It should be inclusive, and communities should have adequate notice of any and all actions of DEQ in this matter. The Board will conduct a special meeting to solicit additional input to inform a future advisory statement regarding the substance of the general permit.

To accomplish meaningful engagement of affected communities the EJE Advisory Board unanimously consents to offer the following recommendations to DEQ.

1. Conduct at least four public meetings. At least two should be public face-to-face meetings in the counties most affected – one in Duplin County and one in Sampson County. All meetings should be held in accordance with CDC COVID-19 guidelines to protect the health and safety of all attendees.
2. Alternatively, if it is not feasible to conduct a scheduled face-to-face meeting, DEQ should extend the date for any scheduled meetings until it is safe to conduct in-person meetings to receive public input during the development of the general permit.
3. Provide at least a 60-day notice of any planned public meeting to allow impacted communities to plan their participation.
4. Extend the period for public comment on the draft permit for at least 90 days to allow adequate time for local community members to provide comments for consideration by DEQ.
5. Provide Spanish interpretation services for participants with limited English proficiency. Demographic data reveal Hispanic residents are 1.39 times more likely to live near CAFOs than their white counterparts.⁹
6. Provide Spanish translation of draft permits, EJ analyses and related notices, as well as interpretation of hearing dialogue.
7. Engage an independent consultant to facilitate dialogue between stakeholders and agency staff at all meetings.
8. Respond in writing to community concerns expressed during the permitting process so that agency decision-making is transparent and reflects consideration, not merely invitation, of public input.
9. Consult with the NC Department of Health and Human Services to evaluate the health impacts of existing swine CAFOs including but not limited to those employing directed biogas technology.

Thank you in advance for your consideration in this matter.

⁹ See Wing, supra note 1.

Respectfully submitted by the EJE Advisory Board Leadership Team,

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