

December 22, 2022

By Email

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**Re: Supplement to Complaint Number 05RNO-21-R4 Regarding the North Carolina
Department of Environmental Quality's Issuance of Swine Farm Digester General
Permit**

Dear Administrator Regan and Acting Director Hoang:

On behalf of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy

and the (b)(6) Privacy

(together, "Complainants"), the Southern Environmental Law Center submits this supplement to complaint number 05RNO-21-R4 ("2021 complaint"). The 2021 complaint alleges that the North Carolina Department of Environmental Quality ("DEQ") violated the U.S. Environmental Protection Agency's ("EPA") implementing regulations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq. ("Title VI"), when it issued four individual water quality permits authorizing digester systems at industrial hog operations in

(b)(6) Privacy, (b)(7)(C) Enf. Privacy Counties in March 2021.¹ In issuing the 2022 Swine Farm Digester System General Permit (“Digester General Permit”),² DEQ again—and in the same ways—failed to comply with EPA’s implementing regulations under Title VI.³ Specifically, DEQ failed to conduct a comprehensive cumulative impacts analysis as part of the permitting process and failed to include necessary protections in the Digester General Permit that would mitigate air and water pollution at hog operations in eastern North Carolina. As a result of these failures, DEQ’s decision to issue the Digester General Permit is likely to have a discriminatory impact on Black, Latino, and Native American families in eastern North Carolina.⁴ The Digester General Permit suffers from the same deficiencies, and contains nearly identical terms, as the four individual permits that are the subject of the 2021 complaint and investigation. Like the four individual permits, a disproportionate share of the harms from operations covered by the Digester General Permit will be borne by communities of color. Unlike the four individual permits, however, more than 2,000 industrial hog operations in North Carolina could apply for coverage under the Digester General Permit.⁵

Notably, three of the four permits that were the subject of the 2021 complaint have since been rescinded, and those three facilities are now covered under the Digester General Permit.⁶

Complainants made OECRC aware of the then-forthcoming Digester General Permit in the 2021 complaint and in subsequent verbal and written communications with OECRC.⁷ In the 2021 complaint, Complainants stated that “adding to the urgency of this complaint is the passage of the North Carolina Farm Act in July 2021, N.C. Sess. L. 2021-78, which gives DEQ until July 2022 to develop a new general permit for biogas production at North Carolina’s industrial

¹ Letter from Blakely Hildebrand, SELC, to Lilian Dorka, EPA (Sept. 21, 2021) [hereinafter 2021 Complaint].

² Swine Farm Digester Waste Management System General Permit, Permit No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy N.C. Dep’t of Env’t Quality (June 30, 2022) [hereinafter Digester General Permit] (Exhibit 1).

³ EPA’s Title VI regulations require that civil rights complaints be filed within 180 days of an action by a federal funding recipient. 40 C.F.R. § 7.120. This supplement is not a new complaint and is therefore not subject to the 180-day rule. Nevertheless, this supplement is provided to EPA within the 180-day window after the Digester General Permit was issued.

⁴ See 2021 Complaint, *supra* note 1; see also Letter from Lilian Dorka, EPA, to William Ross, DEQ (Jan. 12, 2017) [hereinafter 2017 Dorka Letter], https://www.epa.gov/sites/default/files/2018-05/documents/letter_of_concern_to_william_g_ross_nc_deq_re_admin_complaint_11r-14-r4.pdf (expressing “deep concern” about DEQ’s permitting program for industrial hog operations and the potential discriminatory effect of this program on communities of color in eastern North Carolina). DEQ’s 2022 Digester General Permit adopts many of the same provisions as the 2014 swine general permit, which was the subject of the 2014 civil rights complaint prompting EPA’s letter to DEQ expressing “deep concern” about discriminatory effects on communities of color.

⁵ Digester General Permit, *supra* note 2, at 1 (stating that any hog operation that houses 250 or more swine, utilizes a “farm digester system,” and is considered a non-discharge operation may apply for coverage under the Digester General Permit).

⁶ See Certificate of Coverage No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Oct. 11, 2022) (Exhibit 2) (rescinding coverage under Permit No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy); Certificate of Coverage No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Oct. 11, 2022) (Exhibit 3) (rescinding coverage under Permit No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy); Certificate of Coverage No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Oct. 11, 2022) (Exhibit 4) (rescinding coverage under Permit No. (b)(6) Privacy, (b)(7)(C) Enf. Privacy).

⁷ 2021 Complaint, *supra* note 1, at 3.

hog operations.”⁸ To emphasize the urgency of resolving this complaint, Complainants also cited to a provision of the 2021 Farm Act that automatically approves coverage under the Digester General Permit ninety days after DEQ receives a complete application.⁹ Moreover, Complainants expressed concerns about the forthcoming Digester General Permit to OECRC repeatedly throughout the permitting process.¹⁰ Complainants urged OECRC to move quickly in resolving the 2021 complaint and bringing DEQ into compliance with its obligations under Title VI, thereby influencing the terms and conditions within the Digester General Permit. Complainants also kept OECRC up to date about the Digester General Permit process, including sharing Complainants’ written comments with the Office and alerting the Office when the Digester General Permit was issued on June 30, 2022.¹¹ Notably, OECRC tolled the investigation into the 2021 complaint on the same day, indicating that, after months of no response, DEQ signaled its willingness to participate in facilitated discussions to reach an informal resolution to the 2021 complaint.¹²

I. Issuance of the Digester General Permit

In July 2021, the North Carolina General Assembly passed the 2021 Farm Bill, which instructed DEQ to create a general permit for farm digester systems by July 1, 2022.¹³ On February 1, 2022, DEQ issued a draft Digester General Permit.¹⁴ On May 2, 2022, Complainants submitted written comments on the draft Digester General Permit, raising several concerns, including that the Digester General Permit as drafted violated Title VI and EPA’s regulations.¹⁵

⁸ *Id.*

⁹ *Id.* at 3

¹⁰ See Email from Blakely Hildebrand, SELC, to Jeryl Covington, EPA (Feb. 1, 2022) (explaining Complainants’ concerns about the risk of increased pollution from hog operations utilizing digesters and open-air secondary lagoons and sharing Complainants’ Dec. 2021 stakeholder comments to DEQ in response to a call for comments about the 2022 Digester General Permit) (Exhibit 5); see also, e.g., Email from Blakely Hildebrand, SELC, to Jeryl Covington (May 2, 2022) (providing a copy of Complainants’ and others’ extensive technical comments on DEQ’s draft Digester General Permit) (Exhibit 6).

¹¹ Email from Blakely Hildebrand, SELC, to Jeryl Covington (May 2, 2022); see also Press Release, *DEQ Issues Digester System General Permits*, NC DEQ (June 30, 2022), <https://deq.nc.gov/news/press-releases/2022/06/30/deq-issues-digester-system-general-permits>; Letter from Blakely Hildebrand, SELC, to Ramesh Ravella, DEQ (May 2, 2022) [hereafter Comments on Draft Digester General Permit] (“Comments on 2022 Draft Swine Digester System General Permit (AWG400000)”) (Exhibit 7).

¹² Email from Jeryl Covington, EPA, to Blakely Hildebrand, SELC (July 13, 2022) (confirming verbal conversation in which OECRO staff conveyed DEQ’s decision to pursue informal resolution); see also Letter from Anhthu Hoang, EPA, to Blakely Hildebrand (Oct. 11, 2022) (tolling the investigation of the 2021 Complaint in light of DEQ’s decision to engage in informal resolution discussions).

¹³ N.C. Sess. L. 2021-78 § 11.(d) (Exhibit 8).

¹⁴ See Press Release, *DEQ Will Host Public Meetings on Digester System General Permits in April*, NC DEQ (Feb. 1, 2022), <https://deq.nc.gov/news/press-releases/2022/02/01/deq-will-host-public-meetings-digester-system-general-permits-april>; Comments on Draft Digester General Permit, *supra* note 11.

¹⁵ See Comments on Draft Digester General Permit, *supra* note 11, at 52 – 57.

DEQ's Digester General Permit allows hog operations that are currently covered by the swine waste management system general permit to construct and operate animal waste management systems that include digester systems that produce biogas. The terms of the four individual permits are largely repeated in the Digester General Permit. The Digester General Permit allows hog operations to dig new lagoons, operate existing lagoons that lack a synthetic liner, and operate near impaired waterways. It does not require monitoring for ammonia or that secondary lagoons, which store digester waste, be covered or lined. It further allows digester waste, after being stored in an open-air secondary lagoon, to be sprayed on nearby fields. Moreover, the analysis included in DEQ's Environmental Justice Report showing the likelihood of disparate impacts on communities of color had no effect on DEQ's permitting decision; DEQ failed to include additional safeguards or application requirements for hog operations that will disproportionately harm communities protected by Title VI.

On July 28, 2022, the (b)(6) Privacy, (b)(7)(C) Enf. Privacy and (b)(6) Privacy, (b)(7)(C) Enf. P filed a petition for a contested case hearing challenging DEQ's issuance of the Digester General Permit.¹⁶ The community groups claimed that, in issuing the permit, DEQ failed to consider the "practicable waste treatment and disposal alternative with the least adverse impact on the environment," as required by state water pollution control statute for "[a]ll permit decisions."¹⁷ (b)(6) Privacy, (b)(7)(C) Enf. Privacy, intervened in that action.¹⁸ Both DEQ and (b)(6) Privacy, (b)(7)(C) Enf. Privacy have argued that the state law requiring cleaner, practicable waste management technology does not apply to hog operations covered under the Digester General Permit. A decision in this case is expected in early 2023.

The Digester General Permit suffers from the same deficiencies as the individual permits. However, because a general permit, by its nature, covers more operations, the effects of the Digester General Permit will be felt in Black, Latino, and Native American communities across eastern North Carolina.

II. The Digester General Permit Authorizes the Same Polluting System as the Individual Permits

Many of the concerns raised in Complainants' 2021 complaint are present in the Digester General Permit. Like the individual permits, the Digester General Permit issued by DEQ authorizes use of the cesspit and sprayfield system. OECRC has previously expressed "deep concern" about North Carolina's permitting programs for industrial hog operations, which

¹⁶ (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Exhibit 9). The parties had a hearing on motions for summary judgment on December 13, 2022.

¹⁷ See N.C. Gen. Stat. 143-215.1(b)(2) ("All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.").

¹⁸ See (b)(6) Privacy, (b)(7)(C) Enf. Privacy, Order Allowing Intervention (Sept. 19, 2022).

authorizes the storage of hog urine and feces in open cesspits and spraying of the waste on fields.¹⁹ The Digester General Permit further entrenches use of the system by not only allowing operations with existing lagoons to install digesters and store digester waste in those existing lagoons, but also by permitting operations to dig new lagoons for digester systems.²⁰ Moreover, the permit includes no limits on venting or flaring methane and other harmful gases from digesters. As a result, communities living nearby these hog operations are likely to experience decreased air quality, contaminated drinking water, and more polluted water ways due to increasing ammonia emissions from the open-air secondary lagoons, increased methane production, and more harmful land-applied waste.²¹

Three of the four operations that received individual digester permits last year are now covered under the Digester General Permit; the fourth facility is likely having a significant effect on air quality and neighbors because the facility is not utilizing the methane and other gases it is harvesting.²² Both DEQ and [REDACTED], which owns all four of the individual operations, have argued in the past that coverage under the Digester General Permit would preclude any challenges to the individual permits.²³ But the facts remain the same: DEQ's permitting of digesters, whether under individual permits or a Digester General Permit, has had and is likely to have a disproportionate impact on communities of color.

III. More Facilities Will be Permitted Under the Digester General Permit

The Digester General Permit authorizes widespread construction and operation of digester systems with less permitting oversight. The Digester General Permit is open to any hog operation that is currently covered by the swine animal waste management general permit.²⁴ Currently, more than 2,000 hog operations are covered by the swine animal waste management general permit,²⁵ and the Digester General Permit does very little to prohibit, limit, or

¹⁹ 2017 Dorka Letter, *supra* note 4, at 1, 5–6, 11.

²⁰ Digester General Permit, *supra* note 2, at 1.

²¹ See Comments on Draft Digester General Permit, *supra* note 11, at 28-39.

²² The fourth operation that received an individual digester permit, [REDACTED] applied for coverage under the Digester General Permit but withdrew its application in November. Currently, the methane produced on [REDACTED] is not being utilized as an energy source and is presumably being flared or vented. Letter from [REDACTED], to Christine Lawson, DEQ (Aug. 19, 2022) (Exhibit 10) (suggesting that the [REDACTED] operation has not been hooked up to any pipeline to transport captured gases from the facility); see also Letter from Ramesh Ravella, DEQ, to [REDACTED] (Nov. 7, 2022) (Exhibit 11) (confirming that the [REDACTED] operation withdrew its application for coverage under the Digester General Permit).

²³ [REDACTED]

²⁴ Digester General Permit, *supra* note 2, at 1.

²⁵ *List of Permitted Animal Facilities*, N.C. Dep't of Env't Quality, <https://deq.nc.gov/permitted-animal-facilities-4-1-2020/download>.

particularize permit conditions for any of those operations. In fact, by its very design, the permit will more quickly approve permits for digester systems.²⁶ Industry has long stated its intentions to install digester systems at hog operations across the state.²⁷ While it is unknown exactly how many of these operations will apply for coverage under the Digester General Permit, the impacts and harms from these operations are likely to be felt disproportionately by the Black, Latino and Native American communities that more commonly live near industrial hog operations.²⁸

IV. The Digester General Permit Will Disproportionately Harm Black, Latino and Native American Communities

A. The Digester General Permit Will Harm Communities in Eastern North Carolina

Like the individual permits, industrial hog operations permitted under the Digester General Permit will produce dangerous new waste streams that will harm people living nearby. Notwithstanding the existence of more environmentally protective pollution control technology, these operations will be authorized to dig new hog waste lagoons or cap existing unlined ones, install digester systems, store digester waste in open-air potentially unlined lagoons, and spray the ammonia-rich digester waste on fields across eastern North Carolina. Since Complainants filed their complaint last September, the harms authorized by North Carolina's issuance of the individual permits and the general permit have become even more evident.

As stated in Complainants' 2021 complaint to OECRC, digester systems exacerbate pollution and negatively impact human health. Several studies have shown that digester waste emits substantially more ammonia than hog waste from conventional lagoons. A study co-authored by North Carolina State University's Dr. Viney Aneja found that digester waste stored in uncovered secondary lagoons emits more ammonia per-hog than conventional hog waste in a lagoon.²⁹ Since Complainants' submission of their 2021 complaint, Dr. Aneja has further distilled the results from that study and isolated the source of the increase in ammonia emissions. He found that emissions from the open lagoon portion of the hog operation specifically increased by 66 percent relative to conventional lagoons.³⁰

²⁶ See N.C. Sess. Law 2021-78 § 11.(b) (giving DEQ only 90 days to issue a certificate of coverage under the Digester General Permit once it receives a complete application).

²⁷ Press Release, *Smithfield Foods Announces Landmark Investment to Reduce Greenhouse Gas Emissions*, SMITHFIELD FOODS (Oct. 25, 2018), <https://www.smithfieldfoods.com/press-room/2018-10-25-Smithfield-Foods-Announces-Landmark-Investment-to-Reduce-Greenhouse-Gas-Emissions>.

²⁸ See, e.g., SELC Demographic Analysis in Exhibit 12, showing that Black families live much closer to industrial hog operations than white families in rural eastern North Carolina.

²⁹ Viney P. Aneja et al., *Characterizing Ammonia Emissions from Swine Farms in Eastern North Carolina: Part 2—Potential Environmentally Superior Technologies for Waste Treatment*, 58 J. AIR & WASTE MGMT. 1145, 1152–55 (2008) (showing higher ammonia emissions from swine operation that utilized open hog lagoon).

³⁰ Viney P. Aneja, *Ammonia Emissions from North Carolina Hog Operations' Animal Waste Management Systems to Produce Biogas*, 1, 4 (Jan. 20, 2022) (Exhibit 13).

The removal of carbon from a digester makes the remaining nitrogen and phosphorus in the digester waste more soluble³¹ and decreases dry matter in the waste³² both of which can increase the ability of pollutants to infiltrate soil and contaminate groundwater. As a result, a leak or overflow from a lagoon storing digester waste can be even more devastating for the environment than a leak or overflow from a conventional lagoon.

The heightened risk of water pollution persists when, after being stored in the secondary lagoons, the digester waste is sprayed on nearby fields. When the waste is sprayed from high pressure hoses—the most common land-application method used on hog operations in North Carolina—more ammonia volatilizes and enters the atmosphere, where it compromises local air quality, drives particulate matter formation, and ultimately deposits in nearby waterways as nitrogen or nitrate.³³ Once the digester waste reaches the ground, the risks of increased soil infiltration and runoff of nitrogen and phosphorus due to reduced dry matter³⁴ and more soluble nitrogen and phosphorus persists.³⁵

Due to the nature of this general permit, these harms will be more pronounced. The Digester General Permit opens a one-size-fits all, direct pathway for digester construction and operation, with very little consideration of the particularities or location of each operation. While industry is likely to target larger, finishing operations,³⁶ the general permit does not bar any operation with coverage under the existing swine animal waste general permit from receiving coverage under the Digester General Permit. Therefore, the Digester General Permit opens the door to the same harms detailed in the original complaint on a vastly greater scale by potentially authorizing the construction and operation of digester systems at more than 2,000 hog operations, most of which are in eastern North Carolina.

³¹ USDA NAT. RES. CONSERVATION SERV., CONSERVATION PRACTICE STANDARD: ANAEROBIC DIGESTER, at 366-CPS-6 (2017), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1254996.pdf (“Land application of digester effluent, compared with fresh manure, may have a higher risk for both ground and surface water quality problems.”); RICHARD BAINES, REDUCING GREENHOUSE GAS EMISSIONS FROM LIVESTOCK PRODUCTION 171 (2020) (“During the [anaerobic digestion] process, livestock and poultry manure are decomposed through the action of microorganisms into biogas slurry containing proteins, amino acids and other water-soluble substances.”).

³² BAINES, *supra* note 31, at 145 (“Due to the reduced [dry matter] content, biogas slurry can infiltrate more rapidly into the soil[.]”).

³³ See Viney P. Aneja et al., *Characterization of Atmospheric Ammonia Emissions from Swine Waste Storage and Treatment Lagoons*, 105 J. GEOPHYSICAL RSCH. 11,535, 11,535-36, 11543 (2000); John T. Walker et al., *Atmospheric Transport and Wet Deposition of Ammonia in North Carolina*, 34 ATMOSPHERIC ENV'T 3407, 3416-17 (2000) (correlating increased ammonia emissions with the increased in the number of local swine operations).

³⁴ BAINES, *supra* note 31, at 145.

³⁵ See Comments on Draft Digester General Permit, *supra* note 11, at 29-32.

³⁶ See Press Release, *supra* note 27.

B. Disproportionate Harm Expected for Communities of Color

The disproportionate burden of pollution shouldered by Black, Latino and Native American families living around industrial hog operations in North Carolina is well documented.³⁷ To date, DEQ's approach to permitting digesters at hog operations has disproportionately impacted communities of color as well as low-wealth communities, making this a significant environmental justice issue. At a special meeting in fall 2021 regarding pollution and adverse health outcomes affecting families living near hog operations in eastern North Carolina and ahead of DEQ's permitting process for the Digester General Permit, members of DEQ's Environmental Justice & Equity Advisory Board adopted a strongly worded recommendation expressing "significant concerns about the pollution and public health implications of this general permitting scheme" and requesting DEQ to "take steps to protect . . . families, their health, and the environment."³⁸ DEQ ignored these recommendations altogether when issuing the Digester General Permit.

An independent analysis of DEQ's permitting of hog operations with digesters as of May 2022 (see Table 1 below) indicates that the facilities operating under individual biogas permits located in predominantly white, more affluent communities each employ animal waste management systems that are significantly more protective of the environment and local communities than those used by facilities located in and around majority Black, Latino, and Native American communities and communities with higher poverty levels.³⁹ Not only are biogas producing hog operations disproportionately sited in and around communities of color and low-wealth communities, but the facilities in and around these communities pollute more than those sited in whiter, more affluent communities.⁴⁰

³⁷ See, e.g., Letter from Marianne Engelman Lado, Earthjustice, to Gina McCarthy, EPA at 34–41 (Sept. 3, 2014), <https://earthjustice.org/sites/default/files/files/North-Carolina-EJ-Network-et-al-Complaint-under-Title-VI.pdf>.

³⁸ Letter from N.C. Env't Just. Equity Advisory Bd. to Sec'y Elizabeth Biser, N.C. Dep't of Env't Quality (Oct. 22, 2021), <https://deq.nc.gov/media/25052/open> (Exhibit 14).

³⁹ See *supra* note 28; see also Table 1. In Table 1, green highlighting indicates that a facility uses some combination of nitrification/denitrification, covered secondary lagoons, and other pollution-reduction technologies.

⁴⁰ See Comments on Draft Digester General Permit, *supra* note 11, at 46-50.

Table 1. SELC Analysis of “Potentially Underserved Communities”			
Permit Number	Percentage of population within 3 miles made up of people of color ⁴¹	Poverty rate ⁴²	Name of Facility
(b)(6) Privacy, (b)(7)(C) Enf. Privacy	32%	9%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy Waste to Energy Digester Facilities
	70%	24%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy Section 4 Sites 1-4, Section 3 Sites 4-5
	70%	24%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy Sec 2 Sites 1-4
	66%	23%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy 1-5 (b)(6) Privacy, (b)(7)(C) Enf. Privacy
	50%	27%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	69%	25%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	59%	21%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy I & II
	51%	21%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy I&II Farm
	40%	14%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	53%	17%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	30%	17%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	18%	13%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy
	77%	24%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy Sec 3 Sites 1-3, (b)(6) Privacy, (b)(7)(C) Enf. Privacy 3-8
	69%	23%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy 1, 2, 4 & 5 & (b)(6) Privacy, (b)(7)(C) Enf. Privacy
	57%	23%	(b)(6) Privacy, (b)(7)(C) Enf. Privacy 4, (b)(6) Privacy, (b)(7)(C) Enf. Privacy I & II, (b)(6) Privacy, (b)(7)(C) Enf. Privacy 1 Site 4

DEQ’s own Environmental Justice Report for the Digester General Permit showed that the five North Carolina counties with the highest number of hog operations per square mile have higher percentages of nonwhite and Hispanic or Latino populations compared to the state.⁴³ With the overwhelming majority of industrial hog operations being located in just a few counties, if even a small percentage of these operations seek coverage under the Digester General

⁴¹ Statewide, the total percentage of people of color is 39.5 percent; highlighting in Table 1 indicates percentage of people of color is 50 percent or greater. See Draft Environmental Justice Report, N.C. Dep’t of Env’t Quality, at 5 (Feb. 2, 2022), <https://deq.nc.gov/media/27116/download?attachment>.

⁴² The state-wide poverty rate is 14.7 percent; highlighting in Table 1 indicates a poverty rate of five percent or more above the state rate or over 20 percent. *Id.*

⁴³ N.C. DEP’T OF ENV’T QUALITY, ENVIRONMENTAL JUSTICE REPORT: BIOGAS DIGESTER GENERAL PERMIT DEVELOPMENT 10 (June 30, 2022) [hereinafter EJ Report], <https://deq.nc.gov/media/30369/download?attachment> (Exhibit 15).

Permit, Black, Latino and Native American families are likely to be disproportionately impacted.⁴⁴

C. DEQ Failed to Consider These Harms in Issuing the Digester General Permit

In issuing the Digester General Permit, DEQ failed to act in accordance with its obligations under Title VI. While DEQ did publish an environmental justice report, that report did not evaluate many other metrics, including for example the presence of other polluting industries in eastern North Carolina, nor did it appear to influence DEQ's permitting decision; DEQ provided no additional safeguards in the permit to ensure that communities protected under Title VI are not disproportionately impacted by the permit.⁴⁵ Further, DEQ did not acknowledge, much less respond, to Complainants' comments about the disparate permitting of hog operations in white communities versus permitting of hog operations in communities of color.⁴⁶ And despite being on notice of the pending investigation of the 2021 complaint and past enforcement action regarding DEQ's permitting of hog operations, DEQ did not include conditions in the permit necessary to protect nearby communities and the environment.

Complainants submitted written comments to DEQ detailing the potential Title VI violations associated with the Digester General Permit.⁴⁷ DEQ responded that it "operates a robust nondiscrimination program that complies with EPA's Title VI regulations."⁴⁸ DEQ further stated that it is "monitoring the national landscape of the discussion and guidance around cumulative impact scoring, including what other states are implementing, and engaging in discussions with EPA staff regarding the anticipated release of cumulative impact analysis guidance documents by the end of 2022."⁴⁹ DEQ made no changes to the final permit based on these comments.⁵⁰

Commenters, including Complainants, also raised concerns to DEQ about the cumulative impacts and environmental injustices associated with the Digester General Permit.⁵¹ Completely ignoring evidence of ongoing impacts to surface waters and air quality from industrial hog operations,⁵² DEQ responded that because permitted operations cannot discharge to surface waters, the Digester General Permit "do[es] not increase the potential for impacts to surface

⁴⁴ See *id.*

⁴⁵ *Id.* at 15-16.

⁴⁶ See Hearing Officer's Report and Response to Public Comments for the Issuance of the State General Permits for Farm Digester Systems on Animal Feeding Operation 12-16 (June 30, 2022) (Exhibit 16) [hereinafter Hearing Officer's Report], <https://deq.nc.gov/media/30387/download?attachment>.

⁴⁷ Comments on Draft Digester General Permit, *supra* note 11, at 53-56, 71-74.

⁴⁸ Hearing Officer's Report, *supra* note 46, at 15-16.

⁴⁹ *Id.* at 16.

⁵⁰ *Id.*

⁵¹ *Id.* at 15 - 16.

⁵² Comments on Draft Digester General Permit, *supra* note 11, at 28-33.

water and groundwater.”⁵³ DEQ claims that prohibiting discharges to waterways “ensure[s] protection of human health and the environment, regardless of race, color or national origin.”⁵⁴ This response is unmoored to the facts on the ground and the best available science and ignores DEQ’s mandatory obligations under Title VI of the Civil Rights Act.

V. Relief Requested

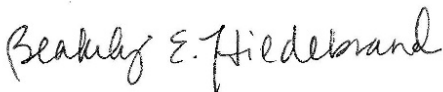
Complainants request that DEQ’s actions and impacts from issuance of the Digester General Permit be included and considered during the informal resolution process and further investigation into this matter.

VI. Conclusion

For all the reasons outlined above, Complainants request that OECRC bring DEQ into compliance with Title VI of the Civil Rights Act of 1964 and EPA’s implementing regulations.

Thank you for your consideration of this additional information. We look forward to continuing discussions with OECRC regarding this matter.

Sincerely,



Blakely E. Hildebrand
Senior Attorney

⁵³ Hearing Officer’s Report, *supra* note 46, at 15.

⁵⁴ *Id.* at 16.