

July 1, 2021

The Honorable Roy A. Cooper III
North Carolina Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

Sent via email

RE: Senate Bill 605 Veto Request

Dear Governor Cooper,

Our organizations strongly urge you to veto Senate Bill 605, the Farm Act of 2021, in light of provisions in Section 11 that would create a one-size-fits-all, fast-tracked permit for a variety of “digester” technologies, limit community input and agency review of proposed projects, weaken long-standing siting restrictions, and remove tax incentives for the installation of environmentally superior waste management technology.

First and foremost, this is an environmental justice issue. The outdated lagoon and sprayfield system used to manage waste at industrial hog operations pollutes our water and air, adversely impacts public health, and diminishes the use and enjoyment of neighboring properties. The well-documented harms caused by the use of the lagoon and sprayfield system are disproportionately borne by communities of color.¹ When issuing Executive Order 143, you emphasized that “all North Carolinians have a right to clean air, clean water, clean soil, and a stable climate, and they deserve an opportunity to participate fully and meaningfully in decisions that affect their living environment.”² Senate Bill 605 (S605) is designed to entrench waste management practices that for decades have deprived communities of color of equal protection and we urge you to demonstrate your commitment to environmental justice by vetoing this bill.

Second, farm digesters can vary significantly in design and effectiveness, underscoring why a general permit is an inappropriate vehicle to assess and mitigate related harms. While you served as Attorney General, three types of anaerobic digesters (an ambient temperature anaerobic digester, a high solids anaerobic digester, and a mesophilic digester) were analyzed pursuant to the Smithfield Agreement. Each technology performed differently, posing different levels of risk to the surrounding environment and community. Appropriately, each was regulated under an individual permit by the N.C. Department of Environmental Quality (DEQ). The spectrum of digester technologies has only increased since that time. One way in which S605 ignores environmental justice is by requiring the creation of a one-size-fits-all general permit that ignores the unique size, location, and environmental impacts of proposed projects.

¹ In January 2017, the U.S. Environmental Protection Agency expressed concern that “African Americans, Latinos, and Native Americans have been subjected to discrimination as the result of NC DEQ’s operation of the Swine Waste General Permit program.” Letter from Lilian Dorka, EPA, to William Ross, DEQ (Jan. 12, 2017). This concern was motivated in part by studies showing that African-Americans, Hispanics, and Native Americans living are more likely than Whites to live within 3 miles of an industrial swine operations permitted by the Department of Environmental Quality, and more likely to suffer detrimental effects of waste mismanagement. *Id.* at 6-7.

² Exec. Order No. 143, 35 N.C. Reg. 12 (July 1, 2020).

Moreover, a general permitting approach overlooks the concerns of residents surrounding individual proposed digester projects. Community members already feel excluded and ignored in DEQ's processes. On several occasions residents that will be directly impacted by biogas projects spoke out and appealed to DEQ and legislators, but their concerns were ignored. The lack of a meaningful opportunity to comment on individual projects reinforces that sense of exclusion. S605 directs the Department of Environmental Quality to move forward with blanket authorization. There is no way for the neighbors of one of these facilities to know they are likely to be impacted or to identify the specific harms they will experience. It is not possible for DEQ to condition the general permit to prevent or contain those location-specific harms. Indeed, the bill would automatically approve coverage under the proposed general permit 90 days after application, further suggesting that a facility could be permitted without adequate consideration of the concerns of neighboring residents or the local impacts on the environment or public health.

To make matters worse, S605 relaxes long-standing protections for surrounding communities. In the Swine Farm Siting Act, the legislature prohibited construction of swine houses or lagoons too close to residents, churches, and other vulnerable facilities.³ The law offered exemptions for closer construction of swine houses but not for lagoons, acknowledging the greater threat posed by the latter. S605 eliminates that distinction, allowing siting of new swine waste lagoons closer to residences, schools, churches, parks, and drinking water wells.

At heart, digesters do not improve control of the pollution that harms surrounding communities. Installing digesters increases the risk of water pollution through leaching and runoff, further threatening water quality in eastern North Carolina. Moreover, the general permit would entirely fail to monitor or regulate air emissions, even while proponents tout the benefits of reducing, and indeed aim to profit by capturing, certain air pollutants. This is particularly shameful given the recently published study attributing hundreds of excess annual deaths in North Carolina to air emissions from industrial hog operations; S605 does nothing to address that.⁴

Finally, S605 asks the state of North Carolina to help pay for these new digesters. Under current tax law, a tax break is not available for a swine waste management system unless the Environmental Management Commission determines that the system meets certain performance criteria. S605 makes these incentives available for digesters without applying those criteria and allows proponents of polluting technology to benefit from tax incentives.

This bill is a continuation of the attack that the NC General Assembly has waged in recent years on communities of color living near industrial swine operations. We appreciate that you used your veto power to oppose previous legislation, including S.L. 2017-11 (H467) and S.L. 2018-113 (S711), similarly designed to reduce legal protections for impacted community members.

When the legislature unjustly rejected your nominee to lead the Department of Environmental Quality, you declared, "nothing is going to stop this administration from working toward a clean energy future for North Carolina and protecting our air and water." S605 reinforces the ongoing harms inflicted on communities, strips existing protections, and removes incentives to invest in cleaner technology. It is inconsistent with your vision of a just energy transition and unfair to North Carolinians. We urge you to veto the bill.

³ See N.C. Gen. Stat. § 106-803.

⁴ Nina G.G. Domingo et. al, Air quality-related Health Damages of Food, 118 *Proceedings of the Nat'l Acad. of Sciences* 20 (May 18, 2021), available at <https://www.pnas.org/content/118/20/e2013637118>.

Sincerely,

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