



**SRAP**  
Socially Responsible  
Agriculture Project

December 20, 2022

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Public Comments on the Intent to Approve a Construction and Operating Permit for  
Blackshirt Feeders LP.

Dear NDEE:

Enclosed please find the comments from the 501(c)(3) organization the Socially Responsible Agriculture Project (SRAP) regarding the Blackshirt Feeders LP application for a State Construction and Operating Permit.

SRAP works with communities across the United States to provide information, education, and advocacy assistance regarding industrial livestock operations. SRAP has been working for several years with communities across different regions of Nebraska who are directly affected by the state's regulated livestock industry, and wish to protect themselves from its harmful impacts to public health, environmental quality, and local economies.

**I. NDEE should deny a Construction and Operating Permit because this is an incomplete and inaccurate application.**

Applicants are required to certify that "information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has

the authority under the laws of the State of Nebraska to sign the application.” NRS 54-2426; see also Neb. Admin. Code 130-2-008.01 (prohibition against presenting false or misleading information to the department). Here, Blackshirt has fallen far short of meeting this requirement, and NDEE must deny the application as incomplete and contrary to the certification requirement.

Additionally, Neb. Admin. Code 130-4-001 contains specific requirements for construction and operation permit applications. Because there are significant gaps between what Blackshirt is actually proposing to the County (see discussion below), and what it is proposing to NDEE, there is no guarantee that Blackshirt’s application even complies with the specific information necessary to satisfy the application requirements. These gaps are not insignificant, especially given the size of the Blackshirt proposal, and the requirement for NDEE to require site-specific pollution control technology for new beef operations. See Neb. Admin. Code 130-7-003.01 and -004.

- A. **NDEE’s public notice is untimely as the application is incomplete and not ripe for public review.** On Nov. 17, 2022, NDEE requested six important pieces of additional information from Blackshirt Feeders (see letter dated 11/17/2022 from NDEE to Blackshirt) which directly relate to the permit application and the scope of issues that concern the public. All of these six requested items relate to site engineering, design, and operation, and thus controls and monitoring and reporting for the permit terms and conditions. The same day, NDEE issued the Notice of Intent to Approve an Application for a Construction and Operating Permit. NDEE then proceeded with issuing the application for public notice and comment on Nov. 23, 2022 with the comment deadline closing on Dec. 26, 2022. As of December 19, 2022, none of the information NDEE requested from Blackshirt has been provided to the public. Moreover, failure to provide this information to NDEE means that Blackshirt’s application does not comply with Neb. Admin. Code 130-4-003. Blackshirt’s application is subject to the requirements of the Engineers and Architects Regulation Act, which cannot be satisfied if incomplete design and calculation information is before NDEE. The public has not had any opportunity to review these documents, and will not have adequate time to review before the end of the current comment period. NDEE cannot issue an intent to approve a Construction and Operating Permit until the permit application is complete and all information required by the Agency has been processed *and made available for public review and comment*.
- B. **NDEE’s public notice is untimely because Blackshirt has not disclosed the full picture of its proposed operation to NDEE.** Blackshirt submitted its permit request for inspection to NDEE on September 22, 2022 and the permit application on October 13, 2022. However, on October 4, 2022, Blackshirt

submitted to Dundy County an application for a conditional use permit to construct and operate 36 anaerobic digesters for methane collection. We have attached this CUP application for NDEE.

Not only is 36 anaerobic digesters an incredibly large number of digesters, but this proposal and method of collecting and managing waste at this 150,000 head facility is integral to the construction and operating permit NDEE, and the public, are now being asked to review. If NDEE had the October 4th CUP application, it would see the field where Blackshirt is proposing to construct the 36 anaerobic digesters, and that this proposal has already doubled in size from 80 to at least 160 acres. The use of this field for anaerobic digesters, and the storage and application of digester waste, must be accounted for and addressed in the waste management plan and nutrient management plan. Yet, this information about anaerobic digestion does not appear in the 262 pages submitted to NDEE. The application materials reference aerobic lagoons and avoiding anaerobic decomposition of organic materials in pens, but fail to disclose a very large anaerobic digestion process and a methane production operation that is, essentially, a gas production facility on agricultural land. If Blackshirt is proposing to produce methane gas, NDEE must exercise a significantly stronger degree of oversight and investigation into what the environmental consequences are of such a proposal.

Again, part of an applicant's certification requirements, they must certify that the nutrient management plan and supporting documentation are complete, but without this information, the application to NDEE is not complete. NRS 54-2426. The statute also contains a continuing duty to update information. NRS 54-2426. From the County application for a CUP, page 9:

*“Blackshirt Feeders LP is proposing to build a world-class methane digester system that will allow harvested manure from the pens and runoff water from the lagoons to be processed and pumped into a series of concrete digester tanks for digestion, or rapid decomposition.”*

Also from the County application document, “Questions by board”, page 17:

*“Dean also explains process of fresh manure being harvested and constantly fed into methane digester and no large piles will be present. Once manure goes into digester, moisture is added and them (sic) is essentially mechanically pressed to separate solid waste. Digesters (approx. 36) will be 20 feet inground and 10 feet out of ground. Traffic congestion will be greatly improved. All run off from pens will be on south side. Size of holding ponds north of digester will be greater than*

*2000 ft length and to remain aerobic, will be 6 ft or less. Piping will be used to transfer waste water from holding ponds to digester.”*

This discusses not only the plan to construct three dozen in-ground manure storage pits, but also additional holding ponds and piping systems. None of this information appears in Blackshirt’s application to NDEE for a construction and operating permit.

Blackshirt has not included this—its primary approach to manure collection and management—in the nutrient management plan or anywhere in the application to NDEE.

NDEE should cease its review of Blackshirt’s application to NDEE for a Construction and Operating Permit, requiring all plans for this project to be fully disclosed and incorporated into the nutrient management plan, and ensure that the vital information is released to the public in advance of public notice and comment.

**C. NDEE has only issued for public notice Blackshirt’s proposed application information and has not prepared a draft permit or provided *any* information on how the agency proposes to regulate Blackshirt.** While technically NDEE may “only” have to issue a “decision” for public notice under NRS 54-2425, a “decision” should be significantly more than the one-page pro forma sheet NDEE issued here. As defined, a construction and operating permit means “the state permit to construct and operate a livestock waste control facility, *including conditions imposed* on the livestock waste control facility and the associated animal feeding operation.” NRS 54-2417(4) (italics added). Furthermore, NDEE should identify how it intends to regulate Blackshirt with conditions which are at least as stringent as the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act. See, e.g. NRS 54-2427. Thus, the “proposed decision” NDEE issues for public notice and comment should include the conditions NDEE intends to impose on Blackshirt.

**II. NDEE should deny a Construction and Operating Permit for Blackshirt Feeders because the plan threatens Waters of the State.**

In Nebraska, groundwater is part of waters of the state and is fully within the purview of NDEE’s permitting authority under the state construction and operation permit framework. See, e.g., Neb. Admin. Code 130-1-050 (defining “waters of the state”); Neb. Admin. Code 130-2-008.002, .003, .004 (prohibitions against discharges to waters of the state). Some examples of where Blackshirt’s application falls short regarding groundwater include:

- A. **Disregard for waste spreading implications to groundwater.** Chapter 9 of Title 130 gives NDEE the authority to deny an application for a livestock waste control facility “*where the Department determines that groundwater may be contaminated.*” (001.04)

Blackshirt Feeders has proposed to apply its waste on 155 fields of about 30,598.3 acres acres of well draining, sandy soils in a region with shallow groundwater. The most frequently occurring soil type in the nutrient management plan is valent sand, which, according to NRCS, is “excessively drained” with “high or very high” saturated hydraulic conductivity.<sup>1</sup>

Blackshirt’s application does not map the depth to groundwater level for each field, or denote variations within fields that cover hundreds of acres each. The “Site Map with Regional Groundwater Elevations” is very general (see Application p. 15). Some fields have wetland delineations (see Application p. 135-229), which should require application limitations and suggest a very close relationship between the surface and groundwater. Static well water levels for approximately 19 existing wells are listed in Blackshirt’s application (see Application p. 17-23) but this is a wholly incomplete picture of the groundwater situation; all of these wells identified (1) are dug to a depth in the 80-100 foot range, and (2) have wildly different static levels ranging from 29 feet to 110 feet. These variations suggest there are more nuances to groundwater across the site than Blackshirt has investigated and disclosed. Additionally, all of these wells identified are located on or directly adjoining the production area. See Application p. 16.

None of the groundwater levels, or wells, identified in Blackshirt’s application address any of the groundwater levels in the 30,000 acres of application fields. None of the information in the application identifies the risks to water, for example, that the general east and southeast regional groundwater elevation of the application fields declines across the fields as the topography descends towards the headwaters of Buffalo Creek and Rock Creek, both of which drain into the Upper Republican River. The land application area proposed by Blackshirt is so large that it appears to cover at least 2 or 3 different HUC 12 regions.

The extreme quantities of waste produced by this facility are a direct threat to groundwater quality. A feedlot of this size, producing what Blackshirt estimates as 3 billion pounds of waste annually, is clearly inappropriate for such a region, especially considering that many rural residents rely on wells for their drinking water, and without even identifying the depth to groundwater risk that the facility

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<sup>1</sup> [https://soilseries.sc.egov.usda.gov/OSD\\_Docs/V/VALENT.html](https://soilseries.sc.egov.usda.gov/OSD_Docs/V/VALENT.html)

poses through its manure application fields We note that Blackshirt was able to provide some detailed topography information for the paved pen areas (see, e.g., Application p. 46-49); similar detailed information for the application fields' topography and hydrogeology and depth to groundwater should be provided.

- B. Failure to provide, and failure of NDEE to require, a hydrogeologic report for implications of holding ponds.** Incredibly, Blackshirt Feeders has not provided - nor has NDEE required - a hydrogeologic evaluation to confirm that holding ponds will be constructed 4 feet above the seasonal high groundwater level, as required by Chapter 9, Section 001.05.<sup>2</sup>, Neb. Admin. Code 130-4-001.07 (“Each application for a construction and operation permit shall include ...[s]upporting geotechnical reports as necessary to support design calculations and ground water information, with appropriate copies from the source of the information.”); see also NRS 81-1504(5). The application only offers a general regional map of groundwater elevations, created by an undisclosed source, and which as other problems discussed above.

This approach to generalizing groundwater at the site - both at the production area and for application fields - is a significant problem because while groundwater static depth in deep wells *may* be, e.g., 29 feet, this does not truly reflect the exposure to groundwater structures like holding ponds and paved pens will have. The application does not indicate permeability factors of the roller compacted concrete product to be used (which is referenced in Blackshirt's Second CUP application to the County, but not in its application to NDEE); as the pens will cover approximately 582 acres, this is not an insignificant component of the operation's potential to contaminate groundwater. We believe that not providing information on roller compacted concrete permeability is an important data point that Blackshirt can easily obtain from the manufacturer and share with the public. Nor does the application clearly address the depth of the holding ponds and how this relates to groundwater levels. The application identifies maximum sludge depths, overflow and freeboard levels, and berms, but at best the public has to piece together topographical elevation map information with these measurements and sectional grids... none of which answer the questions surrounding the groundwater depths in the holding pond locations. Why doesn't Blackshirt simply identify the depth to groundwater across each holding pond site, and the depth of the holding pond? Without this information, we worry that

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<sup>2</sup> See also NRS 81-1504(5) Department is “To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air, land, and water pollution and causes and effects, prevention, control, and abatement of such pollution as it may deem advisable and necessary for the discharge of its duties under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, using its own staff or private research organizations under contract.”

the holding ponds may actually be dug into the water table and potentially in to saturated soils.

Overall, the application continues to be missing critical information, and NDEE is failing to pursue Blackshirt to provide the basic necessary information, or to conduct its own investigation, for NDEE to even be able to begin to design a permit that is appropriate for the largest operation in the state, or to gather information necessary for the public to provide meaningful comments on this proposal.

**C. Incomplete identification and description of manure storage process.**

The nutrient management plan does not explain, or ensure, adequate storage of manure and process wastewater, as required by Title 130 Chapter 14 Section 002.01. Where will Blackshirt stockpile the massive amount of manure produced by 150,000 head of cattle? Is Blackshirt taking the position that leaving manure in paved pens for extended periods of time is “storage”? Under what authority would NDEE justify allowing this approach? How often will the paved pens be scraped? Where will scraped manure go, and how soon? How will Blackshirt conduct pre-application manure sampling of the sheer quantity of solid manure and use that information to determine agronomic application rates? And if manure is “stored” inside the paved pens, any precipitation event will wash it into the holding ponds, which is an effect of consistency of waste in the ponds and nutrient contents that has not been accounted for in Blackshirt’s application. If not stored in the paved pens, where will it be stockpiled? What groundwater protection measures are being required for stockpiled manure, and how long will it be stockpiled for? Again, if somehow these questions are answered in part by the anaerobic digestion proposal, then that proposal must clearly be made part of the permit application to NDEE and Blackshirt’s plans submitted to NDEE.

**D. Failure to address compliance with Nebraska Environmental**

**Protection Act, NRS 81-1504.** The Nebraska legislature’s policy behind the state Environmental Protection Act is: “It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.” NRS 81-1514.

**III. NDEE should hold a series of public hearings on this application.**

**A. If built as proposed, this feedlot would be one of the largest in the country and nearly twice the size of Nebraska’s largest existing feedlot.** And, the question of what Blackshirt is actually “proposing” remains unclear given the incomplete components of the application identified above. When reviewing a model of this scale that will set a precedent for the future of livestock operations in the state, it is important to create a space for more extensive dialogue among the public, state agencies, and the regulated industry to ensure that all concerns for the protection of natural resources and Nebraska’s rural lifestyle are considered and properly addressed. As things stand now, it appears that Nebraska has taken no additional considerations into account, and is treating an application for a 150,000 head operation the same as it would any “large” CAFO of 1,000 head. Even NDEE’s statutory laws, when considered in conjunction with county CUP approvals, only contemplates approvals for cattle operations for 5,000 or fewer cattle. See NRS 54-2437(2). Under the NDEE regulations, the agency “WILL” (capitalization original) “hold a public hearing whenever the director or his or her designee finds, on the basis of requests, a significant degree of public interest in the tentative permit decision.” Neb. Admin. Code 115-3-008. Here, Blackshirt, NDEE, and the County are drawing way outside the lines of what the state’s statutory and regulatory framework is intended to support. This must be addressed in a public forum, with public input, and full consideration by NDEE.

**B. The size and complexity of this plan provokes many questions that NDEE should take great time and care to consider, with public input.** Has NDEE fully considered implications for the surrounding environment, the compounded effects of such a large facility (e.g. truck traffic, land use impacts, greenhouse gas emissions) and how future proposals of such massive operations will collectively impact the natural resources of the state? How does NDEE plan to improve capacity for its compliance and enforcement protocol to ensure adherence to regulation on such a large scale? Proceeding forward with authorizing such a large facility is contrary to the Nebraska Legislature’s intent when passing the Environmental Protection Act, and protecting state land resource principles:

“It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.” NRS 81-1514.

NRS 81-1501(2) similarly declares that the state’s public policy is “to achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history...”.

Other states have encountered difficulty with feedlots of this size; for example, the Five Rivers Cattle feedlot in Arizona was found to be the source of one of the worst *E. coli* outbreaks in the U.S., poisoning 200 people and killing five.<sup>3</sup> Different theories include (1) a canal passing near a 100,000 head feedlot was contaminated from water and air transmission of cattle manure and the water was used to irrigate lettuce, and (2) wind from the feedlot blew on to lettuce fields. What is clear though is that the Five Rivers 100,000 head operation generated so much waste and pollution that it was essentially uncontrollable. How does NDEE propose to require stringent operational controls and limitations, and reporting and monitoring requirements, to protect against a similar crisis?

- C. **Without access to the information, terms, conditions, limitations, monitoring, reporting and enforcement provisions of the Construction and Operating Permit, the public cannot effectively comment on NDEE’s plan to prevent pollution from this facility.** NDEE should allow not one, but multiple public hearings, in different geographic locations, to allow all these questions to be considered.

## **V. Stormwater**

- A. **Construction Stormwater** - For a facility of this size, with over 500 acres of paved open lot pens, new aerobic holding ponds, construction of a pipeline to move waste from the holding ponds across hundreds of acres of land application fields, roads to access all points of the facility, road to bring supplies, feed, and cattle in and out; significant construction work would be required. We believe that the quantities of dust and particulate matter generated by construction of this proposal will be simply too large to be reasonably controlled, the dust and particulate matter will easily evade the property and reach waters such as Buffalo Creek, and Blackshirt will never be able to comply with construction requirements or its own Construction Quality Assurance & Specifications.

Operational - Again, given the size of this facility, the open lot pens, holding ponds, and anaerobic digestion operation, and roads and access

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<sup>3</sup> See, e.g., “What Sparked an *E. coli* Outbreak in Lettuce?” NPR (Aug. 29, 2018) <https://www.npr.org/sections/thesalt/2018/08/29/642646707/investigators-track-contaminated-lettuce-outbreak-to-a-cattle-feedlot>

points which generate stormwater, we question the adequacy of Blackshirt's holding pond capacity stormwater management capacities.

## **VI. Factory Farm Gas**

Though Blackshirt Feeders has not referenced its plans to produce factory farm gas in this application for a Construction and Operating Permit, NDEE must consider the complete project that has been publicly declared<sup>4</sup> and its full range of impacts to surrounding residents and the environment. SRAP has previously submitted comments on the need for NDEE to address the reality of increasing factory farm gas production in our public comments on the NPDES CAFO General Permit. We will incorporate some of those points again here.

Methane digesters do not eliminate nitrogen and phosphorus loads in digested manure; on the contrary, according to NRCS they make nutrients in CAFO waste more soluble and therefore more susceptible to runoff to surface waters and leaching into groundwater.<sup>5</sup> Nebraska CAFO permittees must follow nutrient management plan requirements for land applications and stockpiling of digestate waste. Nebraska's definition of "agronomic rates" requires permittees to "tak[] into account other sources of nutrients." Neb. Admin. Code 130-1-001. This means digestate waste must, like other sources of waste, be monitored, stored, handled like other kinds of waste. Research suggests that factory farm gas digestate waste is higher in certain constituents, increasing risks to surface and groundwater pollution impacts when land applied, or if a discharge occurs. Leftover liquid and solid manure from anaerobic digestate processes should be addressed in permittees' waste management plans.

Additionally, just as feed influences the kind and nature of manure available for land application at a CAFO, and how and when it can be land applied, the feed given to cattle influences the kind of manure available for use in an anaerobic digester. Are CAFO operators to feed their cattle with Clean Water Act land application requirements in mind, or the economic efficiency of their expensive manure digester? And, creating the proper consistency of digestate waste may require even more water be added to the gas production process; in parts of Nebraska that are experiencing a multi-year drought, the use of water for this factory farm gas production process should be addressed through regulatory oversight and reporting mechanisms available to the NDEE through the CAFO permitting system.

Because the factory farm gas equipment is managing and treating CAFO waste, the operation, maintenance, engineering, and training requirements for CAFO production

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<sup>4</sup><https://nebraskaexaminer.com/briefs/nebraskas-largest-cattle-feedlot-gets-ok-from-dundy-county-board/>

<sup>5</sup> See NRCS, 366-CPS-1, Conservation Practice Standard No. 366: Anaerobic Digester, at page 6 (Oct. 2017) ("Land application of digester effluent, compared with fresh manure, may have a higher risk for both ground and surface water quality problems. Compounds such as nitrogen, phosphorus, and other elements become more soluble due to anaerobic digestion and therefore have higher potential to move with water.").

area equipment in CAFO permits should apply to any factory farm gas anaerobic digestion equipment. Digesters require a very high level of engineering management and oversight, they are extremely sensitive to environmental changes, and biological problems can take months to correct.<sup>6</sup> Digesters are not merely another piece of CAFO equipment. These facilities require high standards for construction, maintenance, operation, and technical staff training beyond those applicable to any other CAFO waste management facilities.<sup>7</sup>

Once methane gas is produced, significant additional problems arise as methane gas is difficult to store, requires special equipment to be compressed, and can be explosive if exposed to air.<sup>8</sup> And, transportation or conveyance of the manure to the digester, and of methane gas to other points, are all point sources at risk of structural failures that can cause discharges, leaks, and spills. For example, earlier this year, a brand new cattle digester in Iowa leaked 376,000 gallons of manure mixed with water directly into the ground over the course of three weeks.<sup>9</sup> Operators noticed the liquid levels dropped in the digester, but did not investigate, and continued to add waste to the digester. Eventually someone saw manure flowing into a nearby creek. Other examples include:

- \* In 2008, a large dairy in Wisconsin promised the community that “a manure digester would keep their neighborhood footprint small. However, a decade later, the groundwater is contaminated with nitrates. A lawsuit was filed and the Wisconsin dairy has had to supply the community with bottled water.<sup>10</sup>
- \* In 2016, a digester spilled in the United Kingdom, causing the deaths of livestock and wildlife for miles around.<sup>11</sup>

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<sup>6</sup> Jones, D. et al. “Methane Generation From Livestock Waste.” *Energy Management in Agriculture*, Purdue University Dept. of Agricultural Engineering Cooperative Extension Service, <https://www.extension.purdue.edu/extmedia/AE/AE-105.html>

<sup>7</sup> See, e.g., See Agricultural Anaerobic Digesters: Design and Operation, PennState Extension (Dec. 1, 2016), <https://extension.psu.edu/agricultural-anaerobic-digesters-design-and-operation> (listing disadvantages of digesters including: complex equipment, the need for strict explosion-proof standards, precise temperature controls, and high standards of maintenance and management required); 40 C.F.R. § 412.4.

<sup>8</sup> See, e.g., See Agricultural Anaerobic Digesters: Design and Operation, PennState Extension (Dec. 1, 2016), <https://extension.psu.edu/agricultural-anaerobic-digesters-design-and-operation> (listing disadvantages of digesters including: complex equipment, the need for strict explosion-proof standards, precise temperature controls, and high standards of maintenance and management required); 40 C.F.R. § 412.4.

<sup>9</sup> See, e.g., Strong, J. “Company Filled Massive Manure Container Despite Signs of A Leak, DNR Says.” *Iowa Capital Dispatch* (July 6, 2022), <https://iowacapitaldispatch.com/2022/07/06/company-filled-massive-manure-container-despite-signs-of-a-leak-dnr-says/> (Notably, this CAFO had 2,400 head but needed to find access to another 17,600 cows’ manure to even make the digester an option).

<sup>10</sup> See, e.g., Madden, K., “Juneau County Lawsuit: Dairy Companies Knew They Were Contaminating Groundwater, Wells,” *Wisconsin Rapids Daily Tribune* (Jan. 7, 2019), <https://www.wisconsinrapidstribune.com/story/news/2019/01/07/nitrate-pollution-juneau-county-residents-sue-central-sands-wysocki/2435677002/>

<sup>11</sup> Rose, D. “The Great Green Guzzler.” *Daily Mail* (Dec. 31, 2016) <https://www.dailymail.co.uk/news/article-4078820/The-great-green-guzzler-Monster-digesters-meant-g>

- \* In 2014, a manure digester near Waunakee, Wisconsin malfunctioned, causing a gas explosion and fire. Subsequent disclosures exposed a string of challenges at the facility.<sup>12</sup>
- \* In early 2019, a Michigan prized trout stream turned “ink black” after at least 10,000 gallons of digested waste were applied on snow-covered and frozen ground.<sup>13</sup>
- \* In July 2019, a manure digester tank in Tillamook, Oregon spilled 300,000 gallons of waste into Anderson Creek, a tributary of the Tillamook River.<sup>14</sup>

All of these consequences of the factory farm gas production process must be regulated, and NDEE must take time to consider its approach to such regulation before giving a green light to the Blackshirt Feeders operation.

As a final point on this issue, factory farm gas is also characterized as a “biogas” or a “clean” or “renewable” source of energy. None of these terms mean that production processes to create this energy have low emissions, that the processes themselves are “clean” or “green”, or that there are minimal to no emissions, air quality concerns, greenhouse gas, or climate concerns related to the production and use of this energy.<sup>15</sup> The process of producing and using factory farm gas emits the same greenhouse gasses as other fossil fuels, e.g., CO<sub>2</sub>, NO<sub>x</sub>, ammonia, hydrogen sulfide, and formaldehyde. While these can be regulated under air permitting frameworks, the on-site equipment and use of digestate leftovers is within the realm of Clean Water Act permitting, as is the aerial deposition of these air emissions into waters of the state.

## **VII. Conclusion**

We thank you for the opportunity to comment on this proposal, and we encourage NDEE to utilize its authority to deny a Construction and Operating Permit. At a minimum, NDEE must hold public hearings to allow more open dialogue about the

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<sup>12</sup> Verburg, S. “Blast Destroys Roof of Troubled Biogdigester Near Waunakee.” *Wisc. State J.* (Aug. 6, 2014), [https://madison.com/news/local/environment/blast-destroys-roof-of-troubled-biodigester-near-waunakee/article\\_4e5a7c0a-3a39-5b90-a225-b99dabfd37d1.html](https://madison.com/news/local/environment/blast-destroys-roof-of-troubled-biodigester-near-waunakee/article_4e5a7c0a-3a39-5b90-a225-b99dabfd37d1.html)

<sup>13</sup> Kransz, M. “Manure Spill Turns Portions of West Michigan Trout Stream ‘Ink Black’,” *MLive* (Mar. 21, 2019), <https://www.mlive.com/news/grand-rapids/2019/03/manure-spill-turns-portions-of-west-michigan-trout-stream-ink-black.html>

<sup>14</sup> Dixon Kavanaugh, S, Manure Spill Splashes 300,000 Gallons Near Tillamook Bay, *Oregonian* (July 23, 2019), <https://www.oregonlive.com/news/2019/07/manure-spill-splashes-300000-gallons-near-tillamook-bay.html>

<sup>15</sup> See, e.g. “Anaerobic Digesters,” Vermont Department of Environmental Conservation, <https://dec.vermont.gov/air-quality/permits/source-categories/anaerobic-digesters>

full blueprint and implications of this facility in addition to the Agency's plan to protect Nebraskans and their precious resources.

Sincerely,

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