

Dec. 5, 2023

Re: City of Sunnyside MDNS issued for City File Number SEPA#2023-0200

Trevor Martin, SEPA Responsible Official
City of Sunnyside
Office of Community Development
818 E. Edison Ave.
Sunnyside, WA 98944

Mr. Martin & The City of Sunnyside:

Please accept these comments on behalf of Center for Food Safety's members in the Lower Yakima Valley and specifically Sunnyside. In addition to these comments, CFS joins the comments of Friends of Toppenish Creek, including all comments regarding the proposed factory farm gas project by Pacific Ag, d/b/a Sunnyside RNG LLC, and the City's Mitigated Determination of Non-Significance (MDNS), SEPA#2023-0200.

Center for Food Safety is a non-profit membership organization with offices in the Pacific Northwest, California, and D.C. CFS has members in the Lower Yakima Valley that are very concerned about the impacts of industrial dairy on their air and water, and the immediate impact of a methane digester of the size proposed, as well as its capacity to increase and further entrench the industrial lagoon and spray concentrated animal feeding operation (CAFO) model. **For the reasons below, the City should conduct a full Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA), to evaluate the potentially significant impacts cause by this proposed operation.**

The MDNS is not adequate, particularly as it fails to take into account the full air quality impacts of this operation, and the indirect impacts it will have on the Valley by expanding the market for liquid cow manure and further entrenching and/or expanding the industrial CAFO dairy model that has caused water and air quality impacts to the communities in the Lower Yakima Valley for decades. The City cannot accept greenwashing by Pacific Ag in lieu of real environmental evaluation.

Legal Background

The Washington State Legislature, when it enacted the State Environmental Policy Act (SEPA), recognized that "each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." RCW 43.21C.020(3). SEPA's substantive and procedural mandates overlay all regulatory and nonregulatory activities of Washington's governmental entities, including its municipalities. The City of Sunnyside, as the lead agency here, has the responsibility to "use all practicable means" so that the state and its people may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural, and natural aspects of our national heritage;
- (e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources

RCW 43.21C.020(2).

All branches of government, including municipalities, “shall: “Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official,” including environmental impact, unavoidable adverse environmental effects, alternatives to the proposed action, local short-term uses of the environment versus the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitments of resources. RCW 43.21C.030(2)(c).

The responsible official also “shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.” *Id.* at 43.21C.030(2)(d); WAC 197-11-340(b) (shall send DNS to agencies with jurisdiction).

Major actions having a probable significant, adverse environmental impact require an EIS. RCW 43.21C.031. “Significant” in SEPA “means a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794(1). Significance involves “context and intensity” and thus does not lend itself to a quantifiable test. The rules state:

The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. *An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.*

Id. at 197-11-794(2) (emphasis added). Even proposals intended to protect or improve the environment may require an EIS. SEPA regulations do not allow threshold determinations to be made by balancing the potential “good/bad” effects of a proposal. WAC 197–11–330(5).

The lead agency “shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. If the SEPA Checklist does not include sufficient information, the responsible official may require the applicant to submit more information, make its own further study, consult with other agencies with

expertise, or decide that the action or its impacts are not sufficiently definite to allow analysis and commit to a timely, subsequent environmental analysis. *Id.* Only if the responsible official “determines there will be no probable significant adverse environmental impacts from a proposal” may they issue a determination of non-significance (DNS). WAC 197-11-340(1).

Impacts of Factory Farm Gas Digesters

Methane digesters that use CAFO waste are often referred to as creating “renewable natural gas” when they rely on the additional methane created by factory farms that use a liquid waste management system. Thus, the gas they produce is more appropriately termed “factory farm gas.”

Industrial animal agriculture has already decimated small family farms and is built upon the exploitation of farm workers, communities, animals, and the environment. It is responsible for approximately 37% of all methane emissions in the United States.¹ Indeed, the only source of methane—an extremely powerful short term greenhouse gas—that is *increasing* is manure management. *Id.* Agricultural policy decisions that support the entrenchment and expansion of factory farms is a barrier to real mitigation of the climate crisis and to more sustainable and just farming methods and a diversified food system.²

Factory farm gas production is only compatible with industrial animal agriculture that produces far more waste than can be responsibly managed (as we have seen in the Lower Yakima Valley for decades), and perversely encourages the use of liquified manure management systems—the cheapest and most environmentally destructive form of manure management. Factory farm gas incentives have already created a “manure gold rush” by establishing revenue streams for the manufacture of liquid manure.³ These digester facilities only incentivize the further expansion and consolidation of the largest factory farms, which are already major sources of air and water pollution in the Lower Yakima Valley, and sources of environmental injustice.

Increased herd sizes will significantly increase the amount of methane released into the environment through enteric emissions, while also continuing to increase emissions of other GHGs such as nitrous oxide and carbon dioxide. Indeed, research is finding that GHG emissions from factory farm gas production and use is significantly higher than previously understood, undercutting the supposed climate benefits of factory farm gas even more.⁴

¹ See EPA (2023). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021. U.S. Environmental Protection Agency, EPA 430-R-23-002.

<https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2021>.

² Ruthie Lazenby, *Rethinking Manure Biogas: Policy Considerations to Promote Equity and Protect the Climate and Environment*, Vermont Center for Agriculture & Food Systems (August 2022), https://www.vermontlaw.edu/sites/default/files/2022-08/Rethinking_Manure_Biogas.pdf.

³ See, e.g., Phred Dvorak, *California’s Green-Energy Subsidies Spur a Gold Rush in Cow Manure, A lucrative state incentive to make natural gas from dairy waste is attracting companies from Amazon to Chevron*, Wall Street J. (Feb. 19, 2022), <https://www.wsj.com/articles/californias-green-energy-subsidies-spur-a-gold-rush-in-cow-manure-11645279200>.

⁴ See, e.g., Semra Bakkaloglu et al., *Methane Emissions Along Biomethane and Biogas Supply Chains Are Underestimated*, 5 One Earth 724–736 (June 17, 2022),

Not only are there air quality concerns in the immediate vicinity of these operations, but they result in the burning of methane that further contributes to climate change and continues and expands the use of fossil fuel infrastructure. The City must take into account both the impacts of a changing climate on the proposed facility and how the facility will contribute to further greenhouse gas emissions.

Digesters do nothing to improve the groundwater conditions under existing CAFOs, where seepage to groundwater comes not just from lagoons holding liquid manure wastewater, but also from pens, manure and feed storage areas, and land application fields. Residents in the Lower Yakima Valley already suffer from drinking water contaminated with high levels of nitrates.⁵

Digesters themselves create additional pollution and public health risks. First, they rely on dirty fossil natural gas infrastructure, including leaky pipelines, which leads to the further entrenchment of this infrastructure. Second, they leak methane and manure and can even explode. For example, a digester on a North Carolina factory farm recently ruptured, spilling three million gallons of “gelatinous gray foam”— enough “to fill more than four Olympic-sized swimming pools.”⁶ At least 37,000 gallons of the waste reached wetlands. *Id.*

An EIS is Required Under SEPA

The MDNS and the reports it relies on, including the SEPA checklist, do not consider the full impacts of this facility, including its direct impacts of increasing air pollution in the immediate area, the increase to greenhouse gas emissions overall, and the potential for spills or explosions, and its indirect impacts of incentivizing the expansion and entrenchment of CAFOs in the Lower Yakima Valley. The City must consider all direct, indirect, and cumulative adverse impacts before making a DNS. As to air pollution, the City is only now releasing the New Source Review authored in February. The Yakima County Clean Air Agency is the agency responsible for air quality permitting, and it has not even commented on this proposal, in violation of RCW 43.21C.030(2)(d)

<https://www.sciencedirect.com/science/article/pii/S2590332222002676>; Michael A. Holly et al., *Greenhouse Gas and Ammonia Emissions from Digested and Separated Dairy Manure During Storage and After Land Application*, 239 *Agric. Ecosystems & Env't* 410, 418 (Feb. 15, 2017), <https://doi.org/10.1016/j.agee.2017.02.007>.

⁵ See, e.g., EPA, “Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington” (2013); *Community Ass'n for Restoration of the Environment, Inc. v. Cow Palace, LLC*, 80 F.Supp.3d 1180 (E.D. Wash., 2015) (“application, storage, and management of manure at Cow Palace Dairy violated RCRA's substantial and imminent endangerment and open dumping provisions and that all Defendants are responsible parties under RCRA”); *Community Association for Restoration of Environment Inc. v. Washington Dairy Holdings LLC*, 2019 WL 13117758 (E.D. Wash., 2019) (another example of a citizen suit against a Lower Yakima Valley dairy under the Resource Conservation and Recovery Act due to contamination of drinking water with nitrates from dairy operations).

⁶ Adam Wagner, *'Really terrible science experiment' leads to weeks-long spill from NC hog-waste lagoon*, *The News & Observer* (Sep. 6, 2022), see also, *Sound Rivers, Wayne Co. toxic spill exposes lack of NCDEQ transparency* (Sep. 7, 2022), <https://soundrivers.org/wayne-co-toxic-spill-exposes-lack-of-ncdeq-transparency/> (the spill was likely closer to 3 million gallons of nutrient- and bacteria-laden foam; 37,400 gallons was the number initially cited by the facility in its public notice, but months later they stated that the actual number was approximately 3 million gallons).

and WAC 197-11-340(b). Further, it is commenters' understanding that the Clean Air Agency rejected the February New Source Review application and that no further changes have been made. Nor have permits been granted for stormwater and other water quality issues, meaning that such analysis has yet to be completed. The SEPA Checklist says nothing about what will happen to digestate after the methane is extracted, and how water quality will be protected from its spreading. Without sufficient information about the air and water quality impacts of this facility, the City cannot legally make a DNS.

Even if impacts like explosions are not highly likely, the City must still take them into account. RCW 197-11-794(2) ("An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred."). Emissions of methane and hydrogen sulfide are expected, and these gases are hazardous, and hydrogen sulfide is toxic. Further, the SEPA Checklist does not explain what CAFOs will be paid for their waste, going directly to the question of whether this operation will contribute to the entrenchment and increase in size of CAFOs in the Lower Yakima Valley.

Significance depends on context and intensity, and here there is enough information to point to a reasonable likelihood of more than a moderate adverse impact on environmental quality, but also a lack of information to say there will be no probable significant adverse environmental impacts. WAC 197-11-335.

Environmental Justice

These FFG digesters directly implicate environmental justice, and this proposed digester will be sited in a rural, low-income, community of color. Sunnyside's population is 86.2% Hispanic. And yet the City failed to do any significant outreach to this community, including in Spanish. BIPOC populations across the country are more likely to live next to factory farms and thus bear the burden of pollution from these facilities. The same is now true of factory farm gas digesters.⁷

The City is not operating in a vacuum, but rather in a state with extensive resources to more effectively engage with environmental justice populations, including the Washington State Environmental Justice Task Force and its recent Report and the state's Health Disparities Mapping Tool. Given the resources it is unacceptable that the City failed to conduct sufficient outreach to community members and neighbors of the proposed operation on the SEPA MDNS. No one from the City even appeared at a community organized public meeting held on November 30. The City further noted an appeal deadline, scheduled an appeal hearing, and then canceled it. Appeals to the local legislative body must be held under RCW 43.21C.060 where a nonelected official conditions a proposal under SEPA, as occurred here. Sunnyside Code, Ord. 1475 § 2, 1984, (adopting appeals process established in WAC § 197-11-680).

⁷ Southern Env'tl. Law Center, Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, regarding the North Carolina Department of Environmental Quality's Issuance of Permit Nos. AWI310035, AWI301139, AWI230466, and AWS820005 (Sep. 27, 2021), <https://www.southernenvironment.org/wp-content/uploads/2021/09/2021-09-27-Title-VI-Complaint-Index-DEQ-Biogas-Permits.pdf>.

Finally, this operation was awarded a \$500,000 grant from the WA Dept. of Commerce, without any environmental justice analysis under the HEAL Act.⁸

Sincerely,

Amy van Saun
Senior Attorney
Center for Food Safety
avansaun@centerforfoodsafety.org

⁸ <https://www.commerce.wa.gov/news/rural-communities-to-benefit-from-nearly-5-million-in-new-state-clean-energy-fund-investments/>.