



April 27, 2020

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Gregory Reeves  
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Raleigh, NC 27699

**RE: Comments on the Draft Air Quality Permit No. 10636Roo –  
Active Energy Renewable Power Wood Pellet Project in Lumberton**

Dear Mr. Reeves:

On behalf of the **North Carolina Environmental Justice Network (NCEJN)**, whose members include community groups across the state, including the **Concerned Citizens of Northampton County; Friends of the Earth; the RedTailed Hawk Collective;** and the **Robeson County Branch of the NAACP**, we submit these Comments on the above-referenced Draft Air Quality Permit for Active Energy Renewable Power's (AERP) proposed wood pellet manufacturing facility at 1885 Alamac Road, Lumberton, North Carolina.

We also want to state our full support for the Robeson County Board of Commissioners' request that the Division of Air Quality (DAQ) **suspend the April 27 public comment deadline until after Governor Cooper lifts the COVID-19 Stay at Home Executive Order, and reschedule the public meeting in Lumberton to ensure meaningful engagement of the community** whose health and environment will be directly burdened by AERP's facility. DAQ must allow additional time for direct input from affected community members, especially in light of the COVID-19 pandemic and its effect on Lumberton (particularly Alamac Road) residents who will be most affected by the air, water, traffic, noise and other hazards from AERP's wood pellet facility.

Our comments are intended to support and supplement the Comments jointly submitted by Environmental Integrity Project and Southern Environmental Law Center on behalf of themselves and multiple other organizations ("NGO Comments"). Those comments provide thorough and comprehensive technical and scientific support for our collective request that DAQ take all necessary steps to ensure compliance with federal environmental requirements, including requiring AERP to undergo additional testing, provide air toxics modeling, and add enforceable production and operation restrictions to the Draft Permit. For all the reasons described in detail in the NGO Comments, we

believe the current draft allows AERP to evade Clean Air Act and Title V permitting requirements, regardless of where the facility is located.

In addition, for the reasons discussed below, because the proposed facility would be located in a predominantly African American and disproportionately American Indian, low wealth community, permitting AERP to proceed violates DEQ's obligation to comply with our state constitution's prohibition on race discrimination, Title VI of the Civil Rights Act of 1964, and the Environmental Protection Agency's (EPA) implementing civil rights regulations. Not only do the state Department of Environmental Quality (DEQ) and its divisions have an obligation to not issue permits which cause an unlawful and racially discriminatory impact, DEQ also has an obligation to act consistently with the policy it instituted in 2000 (attached hereto as Attachment 1), which, requires it to "Address environmental equity issues in permitting decisions for projects potentially having a disparate impact on communities protected by Title VI of the Civil Rights Act of 1964."

In spite of its admitted deficiencies (i.e., limited data relevant to evaluating populations located within the one or two mile buffer area), the February 14, 2020 "Environmental Justice Snapshot Report," (EJ Snapshot) which DEQ "conducted at the beginning of the [permit] application process" as a precursor to a "full EJ report or to determine the need for a full EJ report,"<sup>1</sup> raises alarming red flags. As discussed more fully below, in light of the hazards—both known and unknown— created by this type of black wood pellet production, those red flags should require DAQ to pause this process and, as obligated by law, conduct a comprehensive disparate impact analysis of a revised Draft Permit that accounts for the expansion of operations that AERP has already forecast.<sup>2</sup> **No permit should issue unless and until DAQ has determined that it will not cause a discriminatory impact based on race and/or ethnicity.**

We echo our NGO allies' warning that DAQ not repeat the same mistakes that it and other state regulatory agencies made when permitting the first traditional wood pellet mills years ago.<sup>3</sup> As fully addressed in the NGO Comments, the Draft Permit relies on similar faulty assumptions that the agency has repeatedly made over the last decade, accepting as true the industry's unfounded assertions about emissions. Residents who live near the Enviva pellet plants in Northampton and Sampson Counties can attest to the harms they continue to personally suffer as a result of those false assumptions.

For example, Concerned Citizens of Northampton County member Belinda Joyner, who lives a mile and a half from the Enviva plant there, has already shared with DEQ the adverse effects that plant is having on her and her community. Those burdens

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<sup>1</sup> EJ Snapshot at 1 (Feb. 14, 2020).

<sup>2</sup> See NGO Comments at 2 and footnote 2 (citing Active Energy Group, AEG Lumberton Manufacturing Hub (screenshot from Feb. 14, 2020) and Active Energy Group, Transforming Low-Cost Biomass into High-Value Efficient Fuel at Slide 10 (Apr. 2019) (Corporate Presentation)).

<sup>3</sup> See NGO Comments at 9-11 and Environmental Integrity Project, Dirty Deception: How the Wood Biomass Industry Skirts the Clean Air Act (Apr. 26, 2018), available at <https://www.environmentalintegrity.org/wp-content/uploads/2017/02/Biomass-Report.pdf>.

include near-constant noise-- every day and at all hours-- from trucks going in and out of the plant, loading and unloading; and air pollution that causes runny nose and eyes and breathing trouble, resulting in neighbors who live closest to the plant becoming prisoners in their own homes, unable to enjoy their gardens or other outdoor life. The COVID crisis has made this burden even more harmful, since enjoying one's garden or taking a walk outdoors is even more critical to maintaining good mental and emotional health under the "Stay at Home" order. The Concerned Citizens of Northampton County do not want Lumberton residents to suffer what they are now suffering in Garysburg.

**Please suspend this permitting process to conduct and provide to the public the necessary disparate impact analysis and issue a full environmental justice report, followed by an opportunity to meet with and hear from the public, particularly residents within the two-mile buffer in Lumberton, before closing the public comment period.**

## **I. Background**

The NCEJN is a statewide, grassroots, people of color-led coalition of community organizations and their supporters and members who work with low income communities and people of color engaged on issues of climate, environmental, racial, and social injustice. NCEJN's mission is to promote equitable treatment, health and environmental equality for all people of North Carolina through community action dedicated to clean industry, safe workplaces, and fair access to all human and natural resources. It seeks to accomplish these goals through organizing, advocacy, research, and education based on principles of justice, democratic participation, and equitable access to political and economic power for all people. A key component of NCEJN's advocacy has been direct engagement in DEQ's public participation process, particularly regarding the permitting of facilities and other DEQ policies and practices that raise issues of environmental justice and adversely impact and unfairly burden non-white and low-wealth North Carolinians. AERP's Draft Permit raises exactly those issues.

**Concerned Citizens of Northampton County**, whose members are all African American residents, has advocated for their community for the last 20 years on environmental justice issues, including the Enviva wood pellet facility. Concerned Citizens is part of the NCEJN. As indicated above, some of its members live near the Enviva plant and continue to suffer from its adverse impacts on their health and environment.

The **RedTailed Hawk Collective** is a group of indigenous environmental advocates and academic scholars created to support indigenous leadership in addressing the issues of environmental and climate justice and equity in North Carolina.

The **Robeson County Branch of the North Carolina Conference of the NAACP** has members who reside throughout the county and in Lumberton. The NC NAACP is a non-partisan, non-profit organization comprised of over 100 adult branches, over 25 youth and college chapters, and 20,000 individual members through the state of

North Carolina. The fundamental mission of the Branch and NC NAACP is to ensure political, educational, social, and economic equality of rights for all persons and to eliminate racial hatred and discrimination. In furtherance of this mission, the NC NAACP has pursued a variety of strategies, including public education and advocacy, filing Title VI administrative complaints, and litigation challenging racially discriminatory policies and practices and to enforce anti-discrimination laws for the benefit of our members.

**Friends of the Earth** supports local communities' efforts to promote clean energy solutions that are community-controlled and help alleviate poverty and defends EPA and other agencies' work to protect public health from attacks by corporate polluters.

#### **A. Title VI guidelines – cumulative impacts, discriminatory impacts**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d prohibits discrimination on the basis of race, color, and national origin in any programs or activities that receive federal financial support. Commenting on this provision of the landmark legislation, President Kennedy said, “Simple justice requires that public funds, to which taxpayers of all races contribute, not be spent in any fashion that encourages, entrenches, subsidizes, or results in racial discrimination.” The express language of the law, as well as its implementing regulations, make clear that Title VI protections extend not only to intentional discrimination, but also to otherwise neutral “practices that have the *effect* of discrimination on the basis of race, color, or national origin.”<sup>4</sup>

Like other federal agencies, the EPA has issued Title VI implementing regulations.<sup>5</sup> These regulations—which provide guidance to recipients of federal funds like DEQ-- establish that the protections of Title VI extend beyond ensuring that permitted facilities do not violate environmental laws. A recipient of federal funds must also consider the potential disparate impact of a facility's operation on the basis of race, color or national origin.<sup>6</sup> According to EPA guidelines, in DEQ's evaluation of whether a proposed permit has an *adverse* impact, the agency must consider *cumulative* impacts – that is, *all* harmful effects, including heightened health risks resulting from the community's “[t]otal exposure to multiple environmental stressors . . . , including

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<sup>4</sup> U.S. Dept. of Justice, *Title VI of the Civil Rights Act of 1964* 42 U.S.C. § 2000D *et seq.*, <https://www.justice.gov/crt/fcs/TitleVI-Overview> (emphasis added). See *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 593 (1983) (“Title VI reaches unintentional, disparate-impact discrimination as well as deliberate racial discrimination.”).

<sup>5</sup> 40 C.F.R. § 7.35(b)-(c) (2012).

<sup>6</sup> See *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446, 481 (D.N.J. 2001), *modified*, 145 F. Supp. 2d 505 (D.N.J. 2001), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001) (granting plaintiff's request for declaratory judgment on this basis); see also Letter from EPA External Civil Right Compliance Office, Office of General Counsel, to William G. Ross, Jr., Acting Secretary, NCDEQ (Jan. 12, 2017); Letter from Peter M. Rogoff, Adm'r, Fed. Transit Admin., to Steve Heminger, Exec. Dir., Metro. Transp. Comm'n, & Dorothy Dugger, Gen. Mgr., S.F. Bay Area Rapid Transit Dist. (Jan. 15, 2010), available at [http://www.bart.gov/sites/default/files/docs/BART\\_MTC\\_Letter\\_On\\_OAC.pdf](http://www.bart.gov/sites/default/files/docs/BART_MTC_Letter_On_OAC.pdf) (preliminary results of compliance review revealed failure to conduct equity analysis, putting agency in danger of losing federal funds).

exposures originating from multiple sources, and traveling via multiple pathways over a period of time.”<sup>7</sup> EPA’s Title VI Guidance explains that “cumulative impacts of regulated and unregulated sources can be considered to determine the cumulative level of potential adverse impacts.”<sup>8</sup> Accordingly, the Guidance directs agency investigators to “[d]etermine whether the activities of the permitted entity at issue, either alone or *in combination with other relevant sources*, are likely to result in an impact.”<sup>9</sup>

Assessing cumulative impacts is essential to DEQ’s compliance with Title VI, especially in light of the clear public health threat associated with community-wide exposure to multiple social, economic, behavioral and environmental stressors. As EPA acknowledged more than 16 years ago, “[i]t [is] a rare situation where the permit that triggered the complaint is the sole reason discriminatory effects exist.”<sup>10</sup> Therefore, “[e]fforts that focus on all contributions to the adverse disparate impact, not just from the permit at issue, will likely yield the most effective long-term solutions.”<sup>11</sup> EPA has further emphasized the importance of assessing cumulative impacts by encouraging decision-makers like DEQ to apply screening tools to more readily consider multiple and interacting factors. EPA developed EJSCREEN to help users identify areas with a “*combination of environmental and demographic*” characteristics that, together, indicate heightened vulnerability.<sup>12</sup> However, neither EJSCREEN nor DEQ’s “Community Mapping System” include critically important data related to the vulnerability of the population living closest to AERP’s proposed facility.

The analysis of adverse and disparate impacts under Title VI operates independently of federal environmental laws, but that does not make it a lesser obligation for DEQ and its subdivisions like DAQ. The U.S. Commission on Civil Rights has encouraged EPA (and therefore recipients of EPA funds like DEQ) to apply a common sense approach to analysis of cumulative impacts under Title VI which does not require an unnecessarily burdensome study: “Rather than making a case that it is an enormous scientific challenge to sort out the various environmental factors causing adverse human health outcomes, [the agency] must establish a cumulative impact based

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<sup>7</sup> *Title VI Guidance*, 65 Fed. Reg. at 39,684 (emphasis added).

<sup>8</sup> *Id.* at 39,678.

<sup>9</sup> *Id.* at 39,676 (emphasis added).

<sup>10</sup> *Id.* at 39,669.

<sup>11</sup> *Id.*

<sup>12</sup> EPA, *Purposes and Uses of EJSCREEN*, <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> (last updated June 3, 2016) (emphasis added); see also Office of Env’tl. Health Hazard Assessment, CalEnviroScreen Version 2.0 (Oct. 1, 2014), available at <http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-2-0> (“screening methodology that can be used to help identify ... communities that are disproportionately burdened by multiple sources of pollution”); see also *South Camden Citizens in Action v. N.J. Dep’t of Env’tl. Prot.*, 2006 WL 1097498, at \*25-27 (D.N.J. Mar. 31, 2006) (discussion of a screening model that the New Jersey Department of Environmental Protection developed to identify areas where an applicant proposing a new facility would be strongly encouraged to address potential environmental equity concerns, in the context of evaluating an alleged Title VI violation). New Jersey’s screening tool was developed to “show geographic sensitivity to equity issues.” *Id.* at \*25.

on the best available research.”<sup>13</sup> In emphasizing the importance of cumulative impacts, EPA’s Title VI Guidance is consistent with accepted standards for evaluating risks and impacts. As the National Research Council stated, “[I]t is difficult to imagine any risk assessment in which it would not be important to understand the effects of coexposures to agents or stressors . . . or to identify characteristics of the affected populations that could contribute to vulnerability to a given exposure.”<sup>14</sup>

Similarly, the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, directs federal regulators to consider the cumulative impacts of all “major Federal actions significantly affecting the quality of the human environment.”<sup>15</sup> NEPA’s implementing regulations define “cumulative impacts” as the “impact[s] on the environment which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”<sup>16</sup> Importantly, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”<sup>17</sup> As the D.C. Circuit has recognized, “even a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant. One more factory . . . may represent the straw that breaks the back of the environmental camel.”<sup>18</sup>

As discussed in detail below and as recognized in DEQ’s preliminary EJ Snapshot, residents of color within the two-mile buffer of the proposed facility are already subjected to cumulative and racially discriminatory impacts of 133 permitted operations—including two coal ash structural fills, a pre-regulatory landfill and coal ash leakage from Duke Energy’s Witherspoon facility. AERP’s planned wood pellet facility will worsen those adverse impacts. Moreover, neither EJScreen nor DEQ’s “community mapping tool” includes all the facilities and operations that DAQ should consider in a bona fide cumulative impacts assessment, including existing and proposed natural gas infrastructure (including Atlantic Coast Pipeline end of line compressor station), the NCRP poultry litter biogas facility, groundwater contamination from GenX, and the

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<sup>13</sup> U.S. Comm’n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* 125 (2003). Significantly, methodologies exist to account for cumulative impacts. See, e.g., Devon C. Payne-Sturges, *Developments in Cumulative Risk Assessment* (Aug. 12, 2015).

<sup>14</sup> Nat’l Research Council, *Science and Decisions: Advancing Risk Assessment* 219 (2009).

<sup>15</sup> 42 U.S.C. § 4332(C).

<sup>16</sup> 40 C.F.R. § 1508.7.

<sup>17</sup> *Id.*

<sup>18</sup> *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 343 (D.C. Cir. 2002) (quoting *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972)). Analysis of cumulative impacts is also consistent with principles of environmental justice and the recommendations of the National Environmental Justice Advisory Council (“NEJAC”). See, e.g., NEJAC, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Community Risks/Impacts* (2004); H. Patricia Hynes & Russ Lopez, *Cumulative Risk and a Call for Action in Environmental Justice Communities*, 1 J. Health Disparities Res. & Prac. 29, 31 (2007) (discussing NEJAC recommendations and calling for “evidence-based action by exploring multiple and cumulative factors that have been found to increase vulnerability to pollution and risk to ill health”).

more than 70 million chickens<sup>19</sup> raised annually in confinement barns producing waste in excess of 90,000 tons per year. For Robeson County residents, the camel's back may already be broken. But they remain resilient in their commitment to environmental justice and equitable treatment, and demand that DEQ and DAQ fulfill their obligations under Title VI and state anti-discrimination law.

## **B. 2014 Title VI complaint, 2017 EPA letter of concern**

In 2013, NCEJN submitted public comments urging DEQ to modify the proposed Swine Waste General Permit to ensure it complies with Title VI of the Civil Rights Act of 1964. Those comments called on the agency “to assess the racial and ethnic impact of the permitting program” before finalizing the general permit, and to “adopt measures that protect communities from pollution from the swine facilities.”<sup>20</sup> Despite these comments and the supporting scientific research, DEQ made no responsive changes to the 2014 Swine General Permit.

NCEJN and two other groups then filed a Title VI complaint against DEQ with the EPA. The complaint alleged that the General Permit and DEQ's oversight of the permitted facilities have a discriminatory impact based on the race and ethnicity of the residents of communities in which these facilities are concentrated, and included a disparate impact analysis demonstrating that the proportions of African Americans, Latinos, and Native Americans are respectively 1.4, 1.26, and 2.39 times higher than the proportion of non-Hispanic whites within 3 miles of one or more industrial swine facilities.<sup>21</sup>

Following a contentious process that included a subsequent retaliation complaint filed with EPA because of an attempt by industry representatives to intervene in confidential mediation,<sup>22</sup> a national petition that garnered almost 100,000 signatures, and meetings with EPA and congressional staff in Washington DC, in January 2017, the EPA issued its first ever “Letter of Concern.” The letter warned DEQ of the federal agency's “deep concern about the possibility 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[...].”<sup>23</sup> EPA's letter also states that “it is

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<sup>19</sup>North Carolina Annual Statistics Bulletin (2018) at 53, available at [https://www.nass.usda.gov/Statistics\\_by\\_State/North\\_Carolina/Publications/Annual\\_Statistical\\_Bulletin/AgStat/Section04.pdf](https://www.nass.usda.gov/Statistics_by_State/North_Carolina/Publications/Annual_Statistical_Bulletin/AgStat/Section04.pdf). According to on-the-ground information from the Lumber Riverkeeper, we estimate an additional eleven operations since the USDA published this bulletin, with around 230 new barns each holding up to 30,000 birds per flock increases this number by 20 million.

<sup>20</sup> <http://pulse.ncpolicywatch.org/2018/05/03/environmental-justice-groups-reach-settlement-with-deq-over-federal-complaint-hog-farms/>.

<sup>21</sup> Steve Wing & Jill Johnston, Dep't of Epidemiology, Univ. of N.C. at Chapel Hill, *Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians* (rev. Oct. 19, 2015), submitted to EPA as Complaint Attachment 12. Available upon request.

<sup>22</sup> See July 11, 2016 Title VI Civil Rights Complaint and Petition for Relief or Sanction by NCEJN, REACH, and Waterkeeper Alliance Against North Carolina DEQ (EPA OCR File No. 11R-14-R4): Intimidation. Available upon request.

<sup>23</sup> Letter from EPA External Civil Right Compliance Office, Office of General Counsel, to William G. Ross, Jr., Acting Secretary, NCDEQ (Jan. 12, 2017), available at <http://waterkeeper.org/wp->

unclear whether NC DEQ has put in place the foundational elements of a properly functioning nondiscrimination program,” and recommends DEQ conduct a review of its whether its policies and practices meet its obligations under federal antidiscrimination law and to correct any deficiencies.<sup>24</sup>

The Letter of Concern led the parties to re-initiate EPA’s ADR process, which concluded on May 3, 2018 in a groundbreaking settlement agreement. Only two other such agreements have been reached in EPA’s entire history.<sup>25</sup> The Title VI settlement agreement (“Settlement”) commits DEQ to implement new policies to ensure compliance with federal civil rights laws. In addition to specific matters related to the Swine Permit, DEQ committed to develop language access and public participation policies; increase transparency and accountability; revise its non-discrimination civil rights policy; formalize the duties and obligation of the DEQ Title VI Coordinator and establish a Title VI complaint process; engage in a coordinated review of agency activities to assess DEQ’s overall compliance with Title VI; and develop an environmental justice mapping tool to “allow DEQ programs to conduct environmental justice analyses.”<sup>26</sup> While there has been some progress in implementing the terms of the Settlement, much is left to be done.<sup>27</sup>

NCEJN remains committed to the spirit and letter of the Settlement and its promise of a new dynamic in the relationship between DEQ and the communities of color most severely impacted by its permitting policies and practices. As a direct result of the Settlement, DEQ established the agency’s first Environmental Justice and Equity Advisory Board. The Board consists of public health scientists, academics, and community leaders and advocates from across the state, including NCEJN’s Co-Director Naeema Muhammad. The Board’s purpose is to work directly with the Secretary and DEQ staff to help “elevate the voices of the underserved and underrepresented,” and to advise the agency on how “to provide science-based environmental stewardship for the health and prosperity of all North Carolinians.”<sup>28</sup> Notably, the Board has expressly taken up several of the structural environmental justice elements from the Settlement, and recently the issue of cumulative impacts (which began with site visits by board members to Robeson and Northampton Counties, two communities facing issues regarding wood pellet plants and the ACP, among other polluting industries)-- all of which should inform DEQ’s assessment of the Draft Permit and which weigh heavily against its approval.

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content/uploads/2017/01/Letter-to-Complainants-in-Case-11R-14-R4-Forwarding-Letter-of-Concern-to-NC-DEQ-1-12-2017.pdf.

<sup>24</sup> *Id.*

<sup>25</sup> <https://www.scalawagmagazine.org/2018/09/hog-industry-pollution-pt2/>.

<sup>26</sup> Final Settlement Agreement, EPA File No. 11R-14-R4, [https://www.epa.gov/sites/production/files/2018-05/documents/2018-5-7\\_ncdeq\\_reach\\_closure\\_letter\\_per\\_adr\\_agreement\\_11r-14-r4\\_recipien.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/2018-5-7_ncdeq_reach_closure_letter_per_adr_agreement_11r-14-r4_recipien.pdf).

<sup>27</sup> The EJ mapping tool (which DEQ renamed the “Community Mapping System”) lacks important elements necessary for it to be able to conduct an effective environmental justice analysis. The 5 communities in which the tool is to be piloted have still not been finally determined, and the comprehensive assessment of over compliance with Title VI has not yet been conducted.

<sup>28</sup> <https://deq.nc.gov/news/press-releases/2018/05/02/deq-announces-creation-secretary%E2%80%99s-environmental-justice-equity-board>.



In DEQ's Public Participation Plan that resulted from the Settlement, the agency acknowledges its obligation to comply with anti-discrimination laws, including Title VI. Quoting the EPA compliance guideline's definitions of "fair treatment" and "meaningful involvement," the Plan states:

**Fair treatment** means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies, and;

**Meaningful involvement** means

- people have an opportunity to participate in decisions about activities that may affect their environment and/or health,
- the public's contribution can influence the regulatory agency's decision,
- community concerns will be considered in the decision-making process, and,
- decision-makers will seek out and facilitate the involvement of those potentially affected.<sup>29</sup>

Based on the EJ Snapshot, the community targeted within the two-mile buffer of AERP's proposed wood pellet facility in Lumberton is an "underserved community" as defined by DEQ's Public Participation Plan and therefore must be afforded the "enhanced engagement methods" that Plan prescribes. In addition, DEQ must also complete a full EJ Report, which includes a disparate impact analysis of AERP's proposed operation that takes into consideration its predicted increased production volume and coinciding pollution, and cumulative impacts. It will be impossible for DAQ to meet its Title VI obligations of fair treatment and meaningful involvement without that full report, and without allowing additional time *after* the COVID-19 State shutdown is over to inform and engage the community --as the Plan requires-- about the proposed facility, the pollutants it will expose the community to, cumulative impacts of surrounding industrial operations, and data about the community's health vulnerabilities. **The public meeting which was cancelled because of the virus must be rescheduled to occur *after* the full EJ report is made publicly available, so that community members may be meaningfully involved in DEQ's decision-making process regarding this permit.**

### C. DEQ'S "Environmental Justice Snapshot Report" Shows Serious and Substantial Racially Disparate and Cumulative Impacts on Surrounding Residents

It is important to note that Robeson County community members—including Lumbee environmental justice advocates and scientists-- put DEQ on notice at least by August 2019 about the racial and cumulative impacts any additional polluting industry

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<sup>29</sup> DEQ's Public Participation Plan, at 1, available at <https://files.nc.gov/ncdeq/EJ/Public-Participation-Plan.pdf>.

would have in Robeson County.<sup>30</sup> It is also important to consider the fact that Robeson County K-12 students—whose academic achievement ratings were already among the lowest in the state-- will have missed nearly half a year of school as a result of the combined effects of flooding from last year’s hurricanes and this year’s COVID crisis. By any metric, Robeson County has the most vulnerable, underserved population in North Carolina.

DEQ’s own, albeit limited preliminary environmental justice review demonstrates that the residents living within a 2-mile radius of this facility are disproportionately people of color—56% African American and 13% Native American. These percentages show a greater than 10% deviation from the racial demographics of both the county and the state. Similarly, DEQ’s EJ Snapshot shows that the poverty rate for nearby residents exceeds the rate for the state and the county by more than 10% for almost every single sub-demographic (age, sex, race), and for many groups by a much higher margin. The residents and communities identified in the immediate proximity of the facility—disproportionately low wealth people of color—are exactly whom Title VI was designed to protect.

According to the Robert Wood Johnson Foundation 2019 County Health Rankings Report, Robeson County ranks dead last of all 100 counties in North Carolina in health factors and also dead last in health outcomes.<sup>31</sup> For example, Robeson County has only about half as many primary care physicians per capita than the state average; nearly double the number of preventable hospital stays; and nearly double the percentage of residents if poor or fair health.<sup>32</sup> These residents are more vulnerable to negative health impacts and least likely to have access to the medical resources necessary to address those impacts. **It is critical that DAQ consider the particular vulnerabilities of the residents who live closest to the proposed AERP site and conduct outreach to those residents before taking any further steps to permit this operation.**

Compounding the vulnerabilities reflected by Robeson County’s low health rankings is the extraordinarily high concentration of other industrial and polluting sites within the two-mile radius of the proposed facility. According to DEQ, “there are 133 facility permits or incident reports (as of February 12, 2019)” in that buffer, including 2 coal ash landfills, 2 solid waste landfills, 2 active hazardous waste sites, 5 inactive hazardous waste sites, 6 wastewater treatment sites, 2 brownfield sites, a pre-regulatory landfill site, and numerous underground and aboveground storage tank incidents.<sup>33</sup> In

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<sup>30</sup> See Robeson County Community Organizing and Outreach Committee, *Cumulative Impact Summary* (Aug. 21, 2019) (“Robeson County is the most racially diverse rural county in the United States[.]”) (presented to Secretary’s Environmental Justice and Equity Board)(attached hereto as Attachment 2).

<sup>31</sup> See Environmental Justice Snapshot Report, Active Energy Renewable Power-Proposed Facility, Feb. 14, 2020., at 15. See also Robert Wood Johns Foundation, 2020 County Health Rankings, <https://www.countyhealthrankings.org/>

<sup>32</sup> Robert Wood Johns Foundation, 2020 County Health Rankings, <https://www.countyhealthrankings.org/app/northcarolina/2020/rankings/robeson/county/outcomes/overall/snapshot>.

<sup>33</sup> Environmental Justice Snapshot Report, Active Energy Renewable Power-Proposed Facility, Feb. 14, 2020., at 18.

addition, although not counted by DEQ in its assessment of other polluting facilities in the area, there are also 52 hog (with more than 350,000 hogs annually as of 2018) and more than 450 poultry (with an annual estimate of 70 million chickens) confined animal feeding operations in the county.<sup>34</sup> The traffic, air, water and odor pollution from those also adversely impact the health and environment of county residents and should be taken into consideration as cumulative impacts.

As stated at the beginning of these Comments, given DEQ's obligations under Title VI, the 2018 Settlement, its stated commitments to environmental justice and greater engagement with and participation by Title VI communities, DEQ must formally undertake additional measures for greater outreach and engagement with the community as part of an extended public comment period. These measures must include

- rescheduling the public meeting that was cancelled due to COVID 19;
- engaging in additional assessment of the special health risks of the Aramac Road community and other residents within the two-mile radius; and
- sharing the results of that additional assessment with residents before the public meeting.

Should DAQ ultimately decide to grant the permit, it must require air toxics modeling, production and operating limits and additional testing; and develop mitigation measures in consultation and coordination with the community, public health advocates, and local officials. Thank you for your careful consideration of these Comments and requests. We appreciate your service to the people and environment of North Carolina.

Sincerely,



Elizabeth Haddix



Mark Dorosin

Enclosures: Attachments 1 (NCDENR Environmental Equity Initiative) and 2 (Robeson County Community Organizing and Outreach Committee, *Cumulative Impact Summary* (Aug. 21, 2019)).

Cc: NCEJN, Concerned Citizens of Northampton County, RedTailed Hawk Collective, Robeson County Branch of NC NAACP  
Robeson County Board of Commissioners

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<sup>34</sup> See 2019 hog and 2018 poultry data available at [https://www.nass.usda.gov/Statistics\\_by\\_State/North\\_Carolina/Publications/Annual\\_Statistical\\_Bulletin/AgStat/Section04.pdf](https://www.nass.usda.gov/Statistics_by_State/North_Carolina/Publications/Annual_Statistical_Bulletin/AgStat/Section04.pdf) and <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/animal-feeding-operation-permits/animal-facility-map>.