

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

U.S. AGRISOIL, LLC and THE
ENVIRONMENTAL DEVELOPERS
GROUP, LLC,

Plaintiffs,

V.

SHAWN KRELOFF, BTS BIOENERGY, LLC,
BIOENERGY DEVELOPMENT GROUP,
LLC, BIOENERGY DEVCO, LLC, BTS
BIOGAS, LLC, NEWLIGHT PARTNERS LP
and SAGEWIND CAPITAL LLC,

Defendants.

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C.A. No. 1:20-cv-02454

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs U.S. Agrisoil, LLC (“USAG”) and The Environmental Developers Group, LLC (“EDG”) (collectively, “Plaintiffs”), by and through their undersigned counsel, bring this Complaint against Shawn Kreloff (“Kreloff”), BTS Bioenergy, LLC (“BTS”), Bioenergy Development Group, LLC (“BDG”), Bioenergy Devco, LLC (“Bioenergy Devco”), BTS Biogas, LLC (“BTS Biogas”), Newlight Partners LP (“Newlight”) and Sagewind Capital LLC (“Sagewind”) (collectively, “Defendants”). In support of their Complaint, Plaintiffs allege the following:

Nature of the Action

1. Not having any prior relationships, contacts or expertise in the Delmarva Peninsula's poultry industry, Defendants sought Plaintiffs out. With the promise of mutual revenue sharing and other compensation, both Plaintiffs and Defendants worked together to develop a profitable composting and anaerobic digestion enterprise spanning several separate projects. Unbeknownst to Plaintiffs at the time, Defendants hedged their promises and contractual

commitments through the use of false statements and shell entities that were never separately operated nor maintained. Once the venture capital Defendants understood what was at stake, all the Defendants worked to rid themselves of the compensation and revenue override Plaintiffs were owed. When Defendants thought they had exhausted Plaintiffs' usefulness, they discarded Plaintiffs after almost two years of working hand-in-hand. Rather than honor the terms of their agreement or the promises made, Defendants took for themselves a multi-million dollar relationship that will last decades into the future. Through this proceeding, Plaintiffs seek compensation for Defendants' improper and unlawful conduct.

Parties

2. USAG is a limited liability company organized and existing under the laws of the State of Delaware. USAG's member is a citizen of the State of Delaware.

3. EDG is a limited liability company organized and existing under the laws of the State of Rhode Island. EDG's members are citizens of the State of Rhode Island.

4. Upon information and belief, Kreloff is a citizen of either the State of Connecticut, the State of Maryland or the State of New York. Kreloff is a principal of and part (if not entire) owner of the various bioenergy/biogas entity defendants to this litigation.

5. BTS is a limited liability company that was organized and existed under the laws of the State of Maryland. BTS was never registered to do business in Delaware. In May 2019, Kreloff directed that BTS be dissolved a mere three days after he improperly believed BTS was freed from its contractual obligations to Plaintiffs. The attempted dissolution was improper and an unlawful effort to defraud Plaintiffs of amounts owed to them. Kreloff was the BTS member designated to windup BTS' affairs.

6. BDG is a limited liability company organized and existing under the laws of the State of Delaware – first being formed on October 8, 2018. In its registration with the Maryland Secretary of State, BDG represented that it had not done business in Maryland prior to April 9, 2019. As of the date of this filing, BDG is not a business in good standing in Maryland because it failed to file an annual report.

7. Bioenergy Devco is a limited liability company organized and existing under the laws of the State of Delaware – first being formed on October 8, 2018. In its registration with the Maryland Secretary of State, Bioenergy Devco represented that it had not done business in Maryland prior to June 12, 2020.

8. BTS Biogas is a limited liability company organized and existing under the laws of the State of Maryland – first being registered in November 2017. It is the United States company for BTS Biogas SRL/GMBH – a company organized and existing under the laws of Italy. In its registration with the Maryland Secretary of State, BTS Biogas represented that it had not done business in Maryland prior to November 20, 2017. As of the date of this filing, BTS Biogas is not a business in good standing in Maryland because it failed to file an annual report.

9. Newlight is a limited partnership organized and existing under the laws of the State of Delaware.

10. Sagewind is a limited liability company organized and existing under the laws of the State of Delaware.

11. Upon information and belief, the members and partners of the entity defendants are not citizens of either Delaware or Rhode Island.

Jurisdiction and Venue

12. Pursuant to 28 U.S.C. § 1332, jurisdiction is proper in this Court because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.

13. Pursuant to 28 U.S.C. § 1391, venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this district.

Facts

A. Plaintiff's Years of Experience and Contacts within the Industry

14. Charlie Gifford ("Gifford") is a principal for EDG, and Gifford and EDG are agents for USAG. Gifford is a trusted veteran in the waste composting industry. Beginning in 1995, Gifford spearheaded the creation of a cutting-edge recycling and composting facility in Nantucket, Massachusetts. The Nantucket facility was one of the first facilities to compost organic waste on a large scale.

15. In 1997, Gifford's son Chuck joined him at the Nantucket facility, learning the processes and operations of a cutting-edge, highly efficient waste composting facility.

16. In 2010, Gifford started to lend his expertise to a start-up composting facility in Wilmington, Delaware. The Wilmington composting facility was designed and permitted to handle a large-scale organic composting capacity.

B. Plaintiffs Develop a Profitable Relationship with Perdue

17. In 2010, while working at the Wilmington composting facility, Gifford first met Randy Day. At that time, Day was the Senior Vice President in charge of business development for Perdue AgriBusiness, Inc. Since that time, Day has been very successful and is currently Perdue Farm's Chief Executive Officer.

18. Day was working to further Perdue's commitment to environmentally sustainable methods of waste disposal from its facilities. Through that effort, he naturally gravitated toward Gifford when they first met at the Wilmington facility.

19. Because the Wilmington facility was still working to become fully operational at the time, and because it would use some of the same equipment and processes that Gifford helped create in Nantucket, both Day and Gifford agreed to tour the organic composting capabilities already underway in Nantucket.

20. Day liked what he saw in Nantucket and both he and Gifford agreed that there was a viable model for composting organic waste from Perdue's operations. Composting provided an environmentally sustainable alternative (albeit more expensive) to other methods Perdue used to handle organic waste from its facilities.

21. Thereafter, Perdue and Day set about to issue a Request for Proposal in 2011 to develop, build and operate an organic composting facility that would meet Perdue's specific needs.

22. Gifford worked with the Wilmington facility to submit a proposal to Perdue.

23. Based in large part on Gifford's expertise, the Wilmington facility was awarded the opportunity to develop, build and operate an organic composting facility for Perdue.

24. At about the same time, the Wilmington facility underwent some organizational changes. Gifford's other partners wanted to focus on organic wastes, including restaurants, supermarkets and other large-scale food producers, while Gifford saw the opportunities presented by single stream agricultural organic waste recycling.

25. As a result, Gifford was able to separate from his partners in the Wilmington facility and in exchange was given the exclusive right to pursue the development, construction and operations of organic composting facilities for Perdue.

26. Beginning in 2012 and continuing for several years, Gifford and USAG worked with Perdue to develop and build an organic composting facility in Seaford, Delaware.

27. In 2016, Day directed that the Seaford facility be constructed and that USAG (and its affiliate) would oversee its construction and manage the facility's operations once completed. USAG (through its affiliate) owned a 30% interest in the Seaford facility.¹

28. Once the Seaford facility was operational in December 2016, USAG received a \$50,000 per month fee to manage the Seaford facility. From that time until early 2020, Gifford, his son Chuck and his son-in-law Jason Pease were actively involved in the management, operation and product sales of the Seaford facility. In addition to being a partner, Perdue was Plaintiffs' customer.

29. Over their ten years of working together, Day came to trust and rely upon Gifford for his knowledge and expertise in organic composting and the Gifford family's experience with building and managing large-scale organic composting facilities.

C. Kreloff is Introduced to Gifford as the Person who has Connections with Perdue

30. Kreloff described himself as having "a 30-year history of successful entrepreneurial ventures and investments" and having "participated in the founding, operating, financing and advisory of over 25 different companies." <https://bioenergydevco.com/leadership-team/> (last visited August 18, 2020).

31. Kreloff advertised that his "investment thesis for [Bioenergy Devco] is to marry BTS's [BTS Biogas from Italy] proven anaerobic digestion technology with plant financing,

¹ On or about January 27, 2017, Perdue (through its affiliate) purchased the USAG affiliate's 30% interest in the Seaford facility, and the USAG affiliate retained certain rights to payments based on product sales.

engineering, project development, and to guarantee energy yields and plant performance. The last part of the thesis is to bring this solution to the United States and the rest of the world.” *Id.*

32. The first hurdle for Kreloff and his investment thesis was getting to know the right people. Kreloff first engaged Nelson Widell as a consultant to identify potential opportunities.

33. Widell had worked with Gifford at the Wilmington facility and knew of Gifford’s successful relationship with Perdue and Day. As a result, Widell first introduced Kreloff to Gifford.

34. On March 5, 2018, Gifford, Kreloff and Widell had their first call to discuss how Kreloff and his companies could work with Gifford. Interested in establishing anaerobic digestion operations in the United States, Kreloff worked with Gifford to leverage the relationships Gifford had with Perdue and other poultry companies.

35. Before this time, Kreloff had no prior contacts or relationships with either Perdue or Day.

36. On May 3, 2018, Gifford, Chuck Gifford, Kreloff and Widell met in person in Georgetown, Delaware to discuss Gifford’s work with Perdue and how the relationship between Kreloff and his companies would work with Gifford and the companies with which he was involved.

37. During a follow-up call on May 9, 2018, Gifford and Kreloff further discussed a potential consulting agreement between the two parties and that Perdue’s Accomac, Virginia facility was a prime target for application of anaerobic digestion technology.

D. Defendants Contract with Plaintiffs to Mutually Profit from Plaintiffs' Industry Experience and Contacts

38. At the same time Kreloff and Gifford were framing the expectations of their relationship moving forward, Kreloff had his attorney, Aaron Greenfield, draft a Consulting Agreement.

39. While effective as of May 1, 2018, Kreloff and Gifford executed the Consulting Agreement on May 31, 2018.

40. The company Kreloff chose to shoulder his obligations under the Consulting Agreement was BTS.

41. While the Consulting Agreement was effective as of May 1, 2018, Greenfield had not formed BTS until May 22, 2018.

42. While backdating a contract to a time when the contracting company did not exist is troubling, Plaintiffs later discovered that Kreloff engaged in a pattern of unlawful corporate structuring in an effort to defraud them.

43. Kreloff previously incorporated Gotham Heavy Industries, Inc. in Delaware on January 19, 2016 and registered it as a corporation in Maryland on November 15, 2016. Thereafter, Gotham registered BTS Bioenergy, Inc. (not BTS Bioenergy, LLC) as a tradename in Maryland on September 14, 2017.

44. If Kreloff intended to act in good faith toward Plaintiffs, he could have utilized either Gotham, BTS Bioenergy, Inc. (versus BTS Bioenergy, LLC) or BTS Biogas as the contracting party to the Consulting Agreement. Instead, Kreloff (through the use of his legal counsel) purposefully chose to create and use BTS as the shell contracting party. Upon information and belief, Kreloff failed to observe corporate formalities for BTS – BTS did not have an operating agreement, bank account or operations separate from Kreloff or his other companies.

45. Despite manifest representations to the contrary, Kreloff never intended to honor BTS' obligations under the Consulting Agreement.

46. Notwithstanding this fraud, the express terms of the Consulting Agreement are clear. BTS' successors and assigns are liable for the compensation owed Plaintiffs.

47. The Consulting Agreement identifies that EDG was BTS' "exclusive business development provider for Perdue Farms within the United States and all other poultry companies located on the Delmarva Peninsula" (Exhibit A at ¶ 1(c)).

48. In addition, the parties agreed that EDG "will serve as [BTS'] sole provider for anaerobic digestion for Perdue Farms and for all poultry companies located in the Delmarva Peninsula." (*Id.*). Through this provision, Kreloff and BTS locked-up Gifford and EDG from working with anyone else.

49. The initial period of performance under the Consulting Agreement was May 1, 2018 through April 30, 2019.

50. As payment for the services rendered, BTS agreed to three separate fees. First was a Monthly Fee of \$6,000 that was to be paid each month from May 2018 through at least October 2018. (Exhibit A at ¶ 6(a)). The Monthly Fee could be continued upon the parties' written agreement.

51. BTS never paid the Monthly Fee. Instead, the fee was initially paid by Virtual Equity Partners LLC – an investment company affiliated with Kreloff. Thereafter, the Monthly Fee was paid by BDG. In hindsight, this is further evidence of Kreloff employing BTS as a shell company.

52. The next fee payable under the Consulting Agreement was a Developer Fee. BTS agreed to pay EDG two percent (2%) of BTS' expended capital costs for projects it constructed on

property secured by EDG and provided by Perdue Farms in the United States or another poultry company on the Delmarva Peninsula. (Exhibit A at ¶ 6(b)). This fee was payable even after any termination of the Consulting Agreement if the Parties agreed in writing that EDG's efforts resulted in the given project.

53. The last fee payable under the Consulting Agreement was a Tipping Fee. BTS agreed that it would pay EDG the following:

[T]wo dollars (\$2) per ton for every ton of organic waste collected and delivered by Perdue Farms in the United States or all other poultry companies located on the Delmarva Peninsula to [BTS'] facilities. In addition, based upon a standard tipping fee of fifty five dollars (\$55) per ton, [BTS] will pay [EDG] twenty five percent (25%) of any tipping fee it can secure over and above the standard tipping fee of fifty five dollars (\$55) per ton.

(Exhibit A at ¶ 6(c)). This fee was payable even after any termination of the Consulting Agreement if the Parties agreed in writing that EDG's efforts resulted in the given project.

54. In order to protect the value of the relationships it had with Perdue, EDG insisted on the non-circumvention and non-solicitation provisions contained in the Consulting Agreement.

55. Specifically, BTS agreed and warranted that neither it nor its affiliates would circumvent or attempt to circumvent EDG's relationship and contacts with Perdue. (Exhibit A at ¶ 11).

56. BTS also agreed that for a period of twelve (12) months after any termination of the Consulting Agreement it would not "directly or indirectly, solicit or attempt to solicit any business from any of the other Party's Customers, Customer Prospects or Vendors with whom either Party had Material Contact during the term of this Agreement." (Exhibit A at ¶ 12).

57. In order to protect against business entity gamesmanship, the parties expressly agreed that the Consulting Agreement "shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns, whether or not any such person shall have

become a Party to this Agreement and have agreed in writing to join herein and be bound by the terms and conditions hereof.” (Exhibit A at ¶ 13) (emphasis added).

58. BDG² and Bioenergy Devco are BTS successors or assigns.

59. If the successor and assign language was not determinative (which it is), EDG had the added comfort of BTS agreeing not to make use of any affiliate or third-party to circumvent EDG’s relationships and contacts. (Exhibit A at ¶ 11). BDG and/or Bioenergy Devco are BTS’ affiliates or responsible third-parties.

60. Pursuant to the Consulting Agreement’s indemnification provision, EDG is entitled to recover all its losses given a material breach of the representations, warranties, covenants or agreements set forth in the Consulting Agreement.

E. Plaintiffs’ Work Under the Consulting Agreement

61. Relying on the Consulting Agreement and its belief that BTS and Kreloff would work in good faith, Plaintiffs immediately set about to further Defendants’ interests with Perdue.

62. From the beginning, Gifford worked to promote Kreloff and BTS and to determine the suitability of Perdue’s organic feedstock for BTS’ anaerobic digestion technology.

63. In June 2018, Kreloff asked Gifford to secure feedstock samples from several Perdue facilities, including the Accomac facility. Feedstock samples were important to Kreloff to determine the viability of Perdue feedstock in BTS’ anaerobic digestion technology.

64. Despite their early work, BTS had not yet paid Plaintiffs any Monthly Fees. Gifford was frustrated given the one-sided efforts. When Kreloff heard about this frustration, Kreloff

² Kreloff and Greenfield formed Bioenergy Development Group, LLC in October 2018. As evidenced by subsequent conduct, this was a breach and repudiation of the Consulting Agreement and further evidence of Kreloff’s fraud.

reassured Gifford of his commitment to the mutually profitable endeavor: “as we briefly discussed last week, there are things going on that would basically guarantee your success inside the contract we have, and there is a lot of money to be made.” June 25, 2018 email (emphasis added).

65. Buoyed by Kreloff’s reassurances and promises of performance under the Consulting Agreement, Gifford continued to promote BTS and Kreloff to Perdue.

66. Gifford sourced and had delivered to BTS’ affiliate operations in Italy the feedstock samples Kreloff requested. Gifford informed Perdue that the samples were needed for BTS to determine whether the organic waste would produce gases that could be sold to local utilities.

67. In addition, Gifford worked to formulate how BTS’ digestate would compost in the Seaford facility’s current process.

68. Kreloff specifically noted Gifford’s early success. In July 2018, Kreloff commented to Gifford that he met Steve Levitsky – Perdue’s Vice President of Sustainability – at a conference, noting that “‘he knows about us and we’ll be talking soon.’ I assume that was because of you, thanks.”

69. Based on these early successes, on September 11, 2018, Kreloff sent Gifford and Jason Pease a model detailing what an acquisition of the Seaford facility would look like from a financial perspective. Gifford and Jason Pease responded with suggestions to improve the model.

70. On September 26, 2018, Kreloff, Gifford, Jason Pease and Chuck Gifford met for breakfast in Lewes, Delaware. At that meeting Kreloff discussed the parties’ partnership and stated that they were “going to do a lot of deals together.” Plaintiffs continued to foster Kreloff and BTS’ interests with Perdue, specifically focusing on the Seaford and Accomac facilities.

71. On October 30, 2018, Plaintiffs arranged for an in-person meeting amongst themselves, BTS and Perdue at Perdue’s Accomac facility. The parties discussed ways to improve

the Accomac facility's handling of organic waste and the emerging prospects of BTS acquiring the Seaford facility. In addition, that day Kreloff was introduced to Rick Harrell – Perdue's Regional Environmental Manager.

72. Following the meeting, Peter Ettinger – then BTS Bioenergy, Inc.'s Director of Marketing and Sales – emailed Harrell with some follow-up inquiries. Knowing they were key to the introduction and negotiations, Ettinger copied Gifford, Jason Pease and Chuck Gifford on his email.

73. Before, during and for some time after this October 2018 timeframe, Ettinger would use both a Gmail email account and a BTS-Biogas.com email account to conduct business as the BTS Bioenergy, Inc. Director of Marketing and Sales. Kreloff principally relied on his Gmail email account to conduct business during the same time. During this same timeframe, Kreloff and Ettinger were corresponding with Plaintiffs through their usagrisoil.com email accounts.

74. On October 31, 2018, Kreloff, Ettinger, Gifford, Jason Pease and Chuck Gifford meet at the Seaford facility to frame out the structure of a potential transaction to acquire the facility. Kreloff then emailed Gifford, Jason Pease and Chuck Gifford the terms discussed that day. Within that structure was the explicit understanding that “we keep all gas and composting revenue.”

75. Thereafter, the parties continued to refine the terms of the proposed transaction with Perdue.

76. On November 14, 2018, Kreloff, Ettinger and Jason Pease had lunch together in Georgetown, Delaware. During that lunch, Kreloff reiterated his partnership with Plaintiffs and that they would be “doing a lot of deals together.”

77. On November 19, 2018, Kreloff emailed Gifford and Jason Pease “Have a great holiday - I think we have a solid offering out to Perdue [for the Accomac facility].” Gifford responded with his agreement.

78. Thereafter, Jason Pease provided Kreloff with all the site plans and engineering drawings such that Kreloff could start work on additions to the Seaford facility to accommodate gas production operations.

79. On December 1, 2018, Kreloff emailed Gifford the material terms for a Letter of Intent with Perdue for the purchase of the Seaford facility. Gifford responded with changes to the offer that he believed would make the offer more attractive to Perdue. The parties exchanged several more versions of the Seaford Letter of Intent over the next few weeks.

80. At approximately the same time, Kreloff, Ettinger, Gifford and Jason Pease were continuing work on a Letter of Intent to be sent to Harrell for the Accomac facility. Knowing there were other suitors, Gifford suggested that BTS insert a no-shop provision in the Accomac Letter of Intent. The parties exchanged several different versions of the Accomac Letter of Intent over the next few weeks.

81. In early December 2018, Jason Pease provided BTS with information addressing the waste stream analysis and the operating cost numbers for the Seaford facility. This provided BTS with a competitive advantage versus any other potential strategic partner because BTS had the data to forecast both revenue and expenses.

82. As the parties’ efforts to finalize the Seaford Letter of Intent neared completion, Kreloff engaged the New York office of Paul, Weiss, Rifkind, Wharton & Garrison LLP to finalize the document.

83. Gifford’s daughter and Jason Pease’s wife, Katie Pease, is an attorney.

84. Kreloff thought it justified and beneficial to have Katie Pease involved in finalizing the Seaford Letter of Intent with the Paul Weiss attorneys. Accordingly, on December 12, 2018, Kreloff emailed his Paul Weiss attorneys about Katie Pease's role in the process: "[P]lease meet Katie Pease (cc:d), who is assisting our partners US agrisoil on this document. Please see her attached markup. Please Work together to finish this ASAP." (Emphasis added).

85. The next day, December 13, 2018, Kreloff emailed Gifford, Jason Pease and Chuck Gifford about figures included in the Accomac Letter of Intent that was first sent to Harrell on December 9, 2018. Specifically, Kreloff was asking for Plaintiffs' thoughts on waste figures and whether their anticipated operations could handle the volume. Before anyone was to respond to Perdue, Kreloff wanted a "sanity check" on the proposed numbers as compared to the numbers Plaintiffs were "thinking or have."

86. After confirming the correct waste figures, Kreloff submitted the executed Accomac Letter of Intent to Perdue on December 23, 2018. Perdue returned a counter-executed copy on December 24, 2018. Within minutes of receipt, Kreloff forwarded a copy to Gifford, Jason Pease and Chuck Gifford with the message "Merry Christmas!"

87. This communication, and earlier and subsequent communications between Plaintiffs and Defendants, demonstrate that the Accomac facility project was a project that arose during the course of the parties' efforts under the Consulting Agreement.

88. At the same time, the parties had finalized the Seaford Letter of Intent. On December 23, 2018, Gifford submitted the executed Seaford Letter of Intent to Randy Day at Perdue.

89. On February 6, 2019, Perdue returned the fully executed Seaford Letter of Intent to Kreloff. Kreloff forwarded the fully executed letter of intent to Gifford, Jason Pease and Katie Pease noting “Congrats on a big first step!”

90. This communication, and earlier and subsequent communications between Plaintiffs and Defendants, demonstrate that the Seaford facility project was a project that arose during the course of the parties’ efforts under the Consulting Agreement.

F. Plaintiffs Continue to Foster Defendants’ Interests and Kreloff Continues to Reassure Performance Consistent with the Consulting Agreement

91. By February 6, 2019, Plaintiffs had materially performed the services called for under the Consulting Agreement.

92. Nonetheless, Plaintiffs continued to foster Defendants’ interests with Perdue.

93. During the spring of 2019, Kreloff would correspond with and meet with Gifford and Jason Pease to discuss work on the Seaford and Accomac projects.

94. On March 27, 2019, Kreloff, Gifford, Jason Pease and Chuck Gifford met for dinner in Lewes, Delaware. During that dinner, the parties discussed their future work together, with Kreloff stating that “nothing has changed” from the time they first reached agreement under the Consulting Agreement.

95. During this time, USAG was still receiving a \$50,000 monthly fee to manage the Seaford facility. Fundamentally, but for the promises made by Kreloff of compensation under the Consulting Agreement, USAG had no economic motivation to promote Defendants’ interests with Perdue.

96. The Consulting Agreement’s initial term was supposed to end on April 30, 2019. However, both Plaintiffs and Defendants operated as if the Consulting Agreement remained in effect. To be certain, on April 30, 2019 – the day the Consulting Agreement allegedly expired –

Kreloff calendared a meeting between himself and Gifford for May 2, 2019 in Georgetown, Delaware to continue discussion and development of the Seaford and Accomac projects.

97. As described herein, while the parties manifestly assented to an extension of the Consulting Agreement's term, if the Consulting Agreement is found to have expired on April 30, 2019, then Kreloff's companies violated the non-circumvention and non-solicitation provisions contained in the Consulting Agreement.

98. During the summer of 2019, Defendants would ask Plaintiffs to obtain hatchery waste samples for analysis and for Plaintiffs to participate in environmental permitting discussions. Plaintiffs obliged all requests and worked cooperatively with Defendants.

99. During June and July 2019, Plaintiffs and Defendants continued to work on revised tipping fee rates and projections they anticipated from Perdue at the Seaford facility.

100. On August 27, 2019, Kreloff met with Gifford for lunch in Madison, Connecticut. During that lunch, Kreloff again reiterated that the parties were aligned and that nothing had changed. Kreloff represented that he wanted to develop several more projects with Plaintiffs.

101. Based on Kreloff's continued promises, Plaintiffs continued to forge ahead. In September 2019, Gifford reached out to Harrell to inquire about Perdue's Lewiston, North Carolina facility. Harrell provided Gifford with the organic waste information needed to assess the facility as an additional project under the Consulting Agreement. This and other information related to Perdue's Lewiston, North Carolina facility was provided to Kreloff.

102. In October and November 2019, Defendants worked directly with Jason Pease to refine the Asset Purchase Agreement and Feedstock Agreement being negotiated between Perdue and BDG. BDG would ask for Jason Pease's assessment of what equipment should be purchased or whether leases were more economically advantageous. In addition, Gifford and Jason Pease

helped BDG negotiate the tipping fee and price escalator that was to be part of the Feedstock Agreement. Although Plaintiffs were never provided final copies of either agreement, Plaintiffs materially assisted BDG and Kreloff with the negotiation of the terms prior to execution.

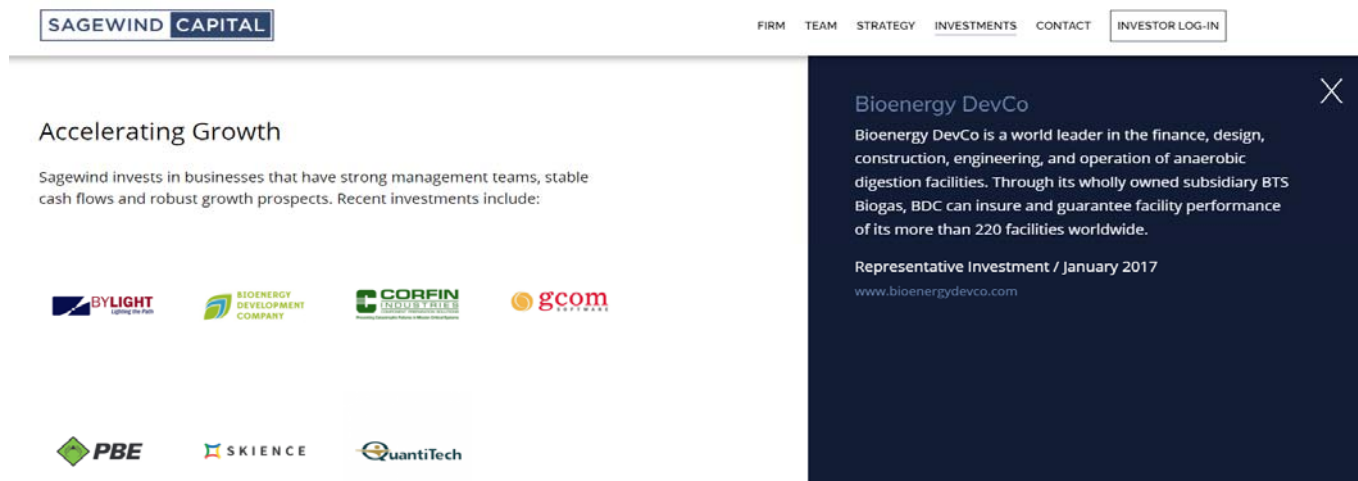
G. Kreloff Raises Capital to Fund his Operations and the Asset Purchase Agreement with Perdue

103. As identified above, Kreloff's investment thesis for his companies was to "marry BTS's [BTS Biogas from Italy] proven anaerobic digestion technology with plant financing, engineering, project development, and to guarantee energy yields and plant performance. The last part of the thesis is to bring this solution to the United States and the rest of the world." *See supra*, ¶ 31.

104. Now that Kreloff had used-up Plaintiffs' contacts and relationships to deliver both the Seaford and Accomac projects, he needed the "plant financing."

105. Sagewind and Newlight were all too willing to provide the financing required. Not just for the impending Asset Purchase Agreement with Perdue, but also to fund operations and to purchase the anaerobic digestion technology from BTS Biogas in Italy.

106. Upon information and belief, Sagewind was the first to invest with Kreloff. Through its website advertising, Sagewind represents that Bioenergy Devco was a representative investment from January 2017.



<http://www.sagewindcapital.com/investments/> (last visited August 19, 2020).

107. In a subsequent press release, Defendants describe Steve Lefkowitz – Sagewind’s Managing Partner – as a founding partner of Bioenergy DevCo. (Exhibit B at 2).

108. As Plaintiffs were working with Defendants to help finalize the Asset Purchase Agreement with Perdue in the middle of 2019, Kreloff was busy raising additional capital.

109. As disclosed in a press release dated August 8, 2019, “Bioenergy DevCo . . . announced today that it has received its first institutional investment of \$106 Million from Newlight Partner LP.” (Exhibit B at 1). Defendants suggested that “Bioenergy DevCo intends to use this substantial new growth capital to expand its operational footprint in North America.” (*Id.*).

110. Upon information and belief, Sagewind and Newlight both knew of the Consulting Agreement and the Developer and Tipping Fees owed Plaintiffs thereunder.

111. Sagewind would not maintain its investment with, and Newlight would not undertake an investment in, Kreloff’s companies with Plaintiffs’ revenue override still in the equation.

112. Sagewind and Newlight interfered with Plaintiffs' rights under the Consulting Agreement and abetted Kreloff's companies' breaches of the Consulting Agreement and his fraudulent conduct.

113. A part of the Newlight capital raise went to acquire BTS Biogas (Italy). In a press release dated August 9, 2019, "Bioenergy DevCo . . . announced [] that it has acquired BTS Biogas, which will operate as an affiliate and enable new operation and expansion of anaerobic digestion in North America." (Exhibit C at 1).

H. Defendants Reach an Asset Purchase Agreement with Perdue

114. On November 15, 2019, Defendants (purportedly through BDG) executed a definitive Asset Purchase Agreement with Perdue related to the Seaford facility (the "APA"). Additionally, upon information and belief, one of the Defendants executed a feedstock agreement with Perdue (the "Feedstock Agreement").

115. Upon information and belief, the purchase price under the APA was the figure Gifford had first identified for Kreloff in December 2018.

116. As part of the Feedstock Agreement, BDG or its affiliates are guaranteed delivery of organic waste from Perdue. Upon information and belief, the price per ton of waste increases over time and is guaranteed for twenty (20) years.

117. Consistent with just the Tipping Fee compensation owed under the Consulting Agreement, Plaintiffs' share of the presently permitted waste stream from just the Seaford facility is valued at more than \$4.2 million at present value. This figure does not include revenue that may be generated from the Accomac or Lewiston facilities or any of the other Perdue facilities Defendants might develop in the future.

118. In addition, this figure does not include the revenue arising from gas generation derived from the waste streams or the Developer Fee for capital expenditures.

119. BDG assumed operational control of the Seaford facility in February 2020.

120. Thereafter, Perdue stopped paying USAG its \$50,000 monthly fee to manage the Seaford facility.

121. Following the consummation of the APA and after assuming control of the Seaford facility, Kreloff stopped corresponding with Plaintiffs.

122. Other than the \$6,000 Monthly Fee that was only paid to Plaintiffs for a few months, Defendants failed and refused to compensate Plaintiffs for their work under the Consulting Agreement.

123. Kreloff's repeated reassurances that he and his companies were committed to working together and that "nothing has changed" were all false.

I. Defendants' Nefarious Conduct

124. On February 17, 2020, Gifford emailed Kreloff asking that the Developer Fee be paid and that the Tipping Fee be paid on a periodic basis following Perdue's delivery of the waste streams.

125. Kreloff never responded to his partner of almost two (2) years.

126. Instead, Plaintiffs had to wait almost two (2) months before receiving a letter from Kreloff's litigation attorney.

127. Undeterred by the facts and the parties' working relationship for two (2) years, Kreloff's litigation attorney posited that BTS ceased operating in May 2019 shortly after the Consulting Agreement expired and that, for at least this reason, Plaintiffs were not owed any more money for their efforts.

128. Upon further inquiry at that time, Plaintiffs learned that as soon as Defendants thought they were clear of contractual responsibility (albeit incorrectly), Kreloff had his business attorney Greenfield cancel BTS' registration on May 3, 2019 (date received by the Maryland Secretary of State, but mailed earlier) – a mere three days after the initial expiration date identified in the Consulting Agreement.

129. Despite having at their disposal at least two existing corporate entities to execute the Consulting Agreement (*e.g.*, Gotham or BTS Biogas), Defendants – assisted by their business attorney Greenfield – purposefully chose to create and use BTS as a shell contracting party for the Consulting Agreement.

130. These facts are evidence of many things, including: (i) BTS' status as a sham company that was never capitalized or operated separately from Kreloff, and (ii) Kreloff's premeditated effort to defraud Plaintiffs.

131. Defendants' formation of BDG and Bioenergy Devco in October 2018 for the purposes of carrying out Kreloff's business, while maintaining BTS as a shell, was a repudiation of Defendants' obligations under the Consulting Agreement.

Causes of Action

Count One – Breach of Contract/Breach of the Implied Covenant of Good Faith and Fair Dealing (Against BTS, BDG and Bioenergy Devco)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

132. The Consulting Agreement is a valid and enforceable contract.

133. EDG fully performed under the Consulting Agreement.

134. As identified above, BTS, BDG and Bioenergy Devco breached and repudiated the Consulting Agreement.

135. If not a breach of the Consulting Agreement's express provisions, BTS, BDG and Bioenergy Devco breached the implied covenant of good faith and fair dealing.

136. Defendants' breaches caused Plaintiffs damages in an amount to be determined at trial.

Count Two – Promissory Estoppel
(Against Kreloff, BTS, BDG and Bioenergy Devco)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

137. As identified above, Kreloff made clear and definite promises, both verbally and in writing, that he and his companies would continue to partner with Plaintiffs and that everything remained the same – both before and after April 30, 2018.

138. Kreloff reasonably expected that his assurances and promises would induce Plaintiffs' actions or forbear from withholding further action.

139. Plaintiffs acted in reliance on Kreloff's promises.

140. Should Plaintiffs be unable to enforce their contractual rights against Kreloff's companies, Plaintiffs would suffer a detriment that could only be avoided by the enforcement of Kreloff's promises.

Count Three – Unjust Enrichment
(Against all Defendants)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

141. As identified above, Plaintiffs conferred benefits upon Defendants by introducing them to Perdue and using their industry knowledge to deliver several profitable opportunities that Defendants would not otherwise have obtained.

142. As identified above, Defendants acknowledged the benefits Plaintiffs brought to them both expressly and through the consummation of business opportunities that will deliver revenue well into the future.

143. As identified above, Defendants have accepted and retained the fruits of Plaintiffs' labor without payment of the fair value for those efforts.

144. Defendants' breaches caused Plaintiffs damages in an amount to be determined at trial.

Count Four – Tortious Interference
(Against BTS Biogas, Sagewind and Newlight)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

145. The Consulting Agreement is a valid and enforceable contract.

146. Defendants BTS Biogas, Sagewind and Newlight knew of the Consulting Agreement and the fees payable thereunder.

147. As identified above, Defendants BTS Biogas, Sagewind and Newlight interfered with EDG's rights under the Consulting Agreement.

148. As identified above, Defendants BTS, BDG and Bioenergy Devco breached the Consulting Agreement.

149. Defendants BTS Biogas, Sagewind and Newlight's improper conduct caused Plaintiffs damages in an amount to be determined at trial.

Count Five – Fraud
(Against Kreloff)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

150. As identified above, Kreloff made misrepresentations of fact to Plaintiffs and employed an artifice to defraud Plaintiffs through his corporate shell game.

151. Kreloff knew his representations and corporate shell game to be false or fraudulent when undertaken or he undertook his conduct with reckless indifference.

152. Kreloff made his misrepresentations and employed his corporate shell game for the purpose of defrauding Plaintiffs.

153. Plaintiffs justifiably relied upon Kreloff's representations and corporate structuring.

154. Kreloff's fraudulent conduct caused Plaintiffs damages in an amount to be determined at trial, including punitive damages.

155. BTS' separate corporate identity should be disregarded/pierced and Kreloff (and any additional BTS members) held liable for the damages attributable to BTS.

Count Six – Aiding and Abetting
(Against BTS, BDG, Bioenergy Devco, BTS Biogas, Sagewind and Newlight)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

156. As identified above, Kreloff engaged in fraud.

157. Defendants BTS, BDG, Bioenergy Devco, BTS Biogas, Sagewind and Newlight knew of Kreloff's fraudulent representations and corporate shell game.

158. As identified above, Defendants BTS, BDG, Bioenergy Devco, BTS Biogas, Sagewind and Newlight knowingly participated in Kreloff's fraudulent conduct and provided him substantial assistance.

159. Defendants BTS, BDG, Bioenergy Devco, BTS Biogas, Sagewind and Newlight's improper conduct caused Plaintiffs damages in an amount to be determined at trial.

Count Seven – Civil Conspiracy
(Against all Defendants)

Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

160. All Defendants conspired with one another to withhold from Plaintiffs the benefits they earned for their work.

161. As identified above, Defendants defrauded Plaintiffs and interfered with Plaintiffs' rights under the Consulting Agreement in an effort to further their joint interests.

162. Defendants' improper conduct caused Plaintiffs damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs U.S. Agrisoil, LLC and The Environmental Developers Group, LLC respectfully request that judgment be entered in their favor and against Defendants BTS Bioenergy, LLC, Bioenergy Development Group, LLC, Bioenergy Devco, LLC, BTS Biogas, LLC, Newlight Partners LP and Sagewind Capital LLC as follows:

- A. An award of compensatory damages in an amount to be determined at trial;
- B. A decree that BTS' separate legal identity is disregarded/pierced and that Kreloff (and any additional BTS members later identified) be held liable for all damages attributable to BTS;
- C. A constructive trust over any future development of Perdue projects by Defendants, including the Accomac and Lewiston facilities;
- D. An accounting of all revenues received and capital expenditures undertaken to date and those reasonably expected to be received or undertaken in the future;
- E. An award of punitive damages;
- F. An award of pre- and post-judgment interest at the legal rate;

- G. An award of attorneys' fees as permitted under the Consulting Agreement or common law;
- H. An award of costs and expenses; and
- I. An award of such other and further relief as the Court deems just and proper.

Dated: August 25, 2020

/s/ Sallie E. Gilbert

Cary Joshi (MD Bar #: 1806070002)
Sallie E. Gilbert (MD Bar #: 1806190061)
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Washington, DC 20007
Telephone: (202) 463-2101
Attorneys for Plaintiffs



March 15, 2021

Sussex County Council
2 The Circle
PO Box 417
Georgetown, DE
Via email

RE: **Public Comment for C/U 2258 Bioenergy Development Group, LLC
Ordinance to grant a Conditional Use of land in an AR-1 Agricultural
Residential District to amend Conditional Use No. 1314 (Ordinance No. 1354)
(as amended by Conditional Use No. 1691 (Ordinance No. 1865) and
Conditional Use No. 1962 (Ordinance No. 2311)**

These public comments are being submitted by the Sussex Health and Environmental Network (SHEN), a coalition of stakeholders that live, work and do business in Sussex County, Delaware. Many of the members could be directly impacted by the above referenced project. The original comments sent to the Planning & Zoning Commission by SHEN for this project are being resubmitted as comments to the County Council for the hearing, including all attachments. The County Council needs to deny the Bioenergy Development Group, LLC's application for the reasons set forth below and in the attached documents. If the Commission does not deny the application, it should set a new date for the public comment period and hearing and properly re-notify the public of such if and when the following issues are addressed or corrected in the application:

- The public was not provided full and adequate information about this development proposal. Full information has not been provided within the requisite time period needed for the public and interested parties to review the application to be able to meaningfully participate in the input process.
 - It is unclear in the public notification if Sussex County is considering the granting of a conditional use or an amendment of an existing conditional use.
 - There is not full information about this project. The project includes a heavy industrial use and additional land development components for gas pipeline infrastructure. The full scope of the project is not known and information about it has not been made adequately available to the public
 - It is suspected that the actual development is not an appropriate use or conditional use for the zoning district in which it is being proposed.
- a Traffic Impact Study should be required, as well as a PLUS review for new full application.
- The proposed use is being miscategorized and does not appear to be an allowed use in the AR-1 district.

- The proposal is a heavy industrial use, and the existing conditional use cannot be amended to include it, per the terms of the original conditional use permit(s).
- According to the attached document from DNREC, dated Feb. 13, 2017, there is a limited market in Delaware for the finished compost that will be produced, which suggests there will be no place to adequately and economically dispose of it. This creates environmental risks that far outweigh the benefits of this project for Sussex County.

Again, full information about this proposed project has not been made available and it is unclear who the actual applicant is for the conditional use, as well as for the other permits required for the overall development project. The application should be denied for these reasons and for the reasons set forth in the attached documents.

Thank you for your consideration; for your service, and for protecting the public health and safety of the people of Sussex County.

Respectfully:

Maria Payan
Sussex Health and Environmental Network
Socially Responsible Agricultural Project
MariaP@SRAProject.org

Encl.



Grobbel Environmental & Planning Associates

8288 E North Wind Tr PO Box 58 Lake Leelanau, MI 49653

February 7, 2021

Mr. Robert Wheatley, Chair
Planning & Zoning Commission
Sussex County
2 Circle, P.O. Box 417
Georgetown, DE 19947

RE: Planner's Report/Public Comment - Bioenergy Development Group, LLC - Docket No. C/U 2258.

Dear Mr. Wheatley,

The Bioenergy Development Group, LLC (a.k.a. BDG or Devco) has applied to the Sussex City Planning & Zoning Commission for a Conditional Use (CU) permit for on-site poultry litter/waste processing and handling for nutrient recovery for natural gas and electric generation, and digestate waste to be land applied on active farm fields.¹ The proposed "biogas" facility would be located at 28338 Enviro Way, Seaford, Delaware, Parcels # 132-6.00-88.01 & 95.00, 132-11.00-41.00 and 132-11.00-41.02 (totaling 228.88 acres). The subject parcels are zoned Agricultural Residential (AR-1) by the Sussex County zoning code. All surrounding properties are also zoned AR-1.

The facility is currently occupied by the Perdue AgriRecycle poultry litter composting operation processing 30,000 tons/year of dissolved air flotation (DAF) wastes and producing approximately 15,000 tons of compost/year. Perdue also formerly operated a poultry litter pelletizing plant at this location. BDG proposes an anaerobic digester to process up to 200,000 metric tons/year of DAF and additional poultry industry waste from Perdue and similar companies.² Up to 430,000 MMBtus of natural gas (especially methane CH₄) are proposed to be produced annually which will be shipped off-site via a natural gas pipeline system by Chesapeake Utilities Corporation. Produced biogas requires on-site treatment to remove contaminants including moisture, particulates, oils, volatile organic compounds (VOCs), carbon dioxide (CO₂), and hydrogen sulfide H₂S) through absorption by granular activated carbon filtration.³ Waste tail gases are proposed to be flared off, and CO₂ is planned to be recovered for sale.

¹ Conditional Use, Planning & Zoning Commission Application, Sussex County, Delaware, Bioenergy Development Group, LLC December 22, 2020.

² Duffield Associates, Bioenergy Development Group to Sussex County Planning and Zoning, April 10, 2020.

³ *Ibid.*

Specifically, Applicant seeks to amend CU 1314 (as amended by CU's 1691 and 1692⁴) of the Sussex County zoning code to allow for the proposed land use.

We have reviewed the proposed CU permit application and provide the following professional planner's comments:

1) **Compatibility with surrounding zoning and land uses.**

According to the Sussex County zoning code,⁵ the purpose of the AR-1 zoning districts is to provide for a full range of agricultural activities and to protect agricultural lands, as one of the county's most valuable natural resources, from the depreciating effect of objectional, hazardous and unsightly uses. They should also protect established agricultural operations and activities...(and) intended for protection of watersheds, water resources, forest areas and scenic values and, at the same time, to provide for low-density single-family residential development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings. These AR regulations seek to prevent untimely scattering of more-dense urban uses, which should be confined to areas planned for efficient extension of public services. *Importantly, the proposed use and its associated infrastructure are not allowed as permitted or conditional use within the AR-1 district.*⁶

The Sussex County Planner has determined that “(b)ased on the analysis of the (proposed) land use, surround land uses, the Conditional use to amended CU 1314...to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electric generation, subject to considerations go scale and impact, could be considered as being consistent with the land use, area zoning, and surrounding uses.”⁷ *We find that the proposed land use is entirely incompatible with the purpose and stated intent of the AR-1 zoning district as enacted by Sussex County.*

Agents for the Applicant suggest that more than eight (80) vehicles per day will enter/exist the facility, yet Delaware Department of Transportation (DelDOT) has not yet completed a traffic impact/service level evaluation, nor approved the facility.⁸ Finally, the DelDOT has found that insufficient data has been provided by the Application to determine traffic impact from the proposed Conditional Use and/or the application of its traffic impact study (TIS) method.⁹ *Failure to adequately address traffic impacts from*

⁴ CU 1691 was a request to amend CU 1314 to a micro-nutrient plant for poultry litter with truck entrance and railway spur, approved by Sussex County Council on July 25, 2006, and CU 1692 was an associated request to amended conditions of CU 1691/1324 approval.

⁵ §115-19 of the Sussex County zoning code, as amended.

⁶ It is noted that public utilities, public service uses, buildings, generating or treatment plants, pumping or regulator stations ... are allowed as conditional uses with the AR-1.

⁷ Memorandum, Christin Scott, Planner I, Sussex County to Sussex County Planning Commission Members, February 5, 2021, p. 2.

⁸ Duffield Associates, April 10, 2020, p. 2.

⁹ T. William Brockenbrough, Jr. County Coordinator/Development Coordination, Department of Transportation, State of Delaware, to Janelle Cornwall, Director, Sussex County Planning & Zoning, dated January 16, 2020.

the proposed Conditional Use is required by the Sussex County zoning code, and it's absence renders the application incomplete as submitted precluding Conditional Use approval.

Finally, agents for the Applicant indicate that wetlands are located on the subject parcel(s) but based on information and belief, the Applicant has not provided a wetland delineation report(s) or other confirmation of the lack or extent of wetland impact or wetland impact permitting. *Failure to adequately address potential wetland impacts from the proposed Conditional Use is required by the Sussex County zoning code, and it's absence renders the application incomplete as submitted precluding Conditional Use approval.*

2) “Segmentation” of Proposed Use and Related Inadequacies of CU Application.

Agents for the Applicant stipulate that wastewater discharge permits have not been obtained, and that water supply needs are not known nor approval obtained from the Delaware Department of Natural Resources and Environmental Control (DNREC) for additional on-site water well(s), if needed. *Failure to adequately address water usage needs, potential impacts, and sources from the proposed Conditional Use is required by the Sussex County zoning code, and it's absence renders the application incomplete as submitted precluding Conditional Use approval.*

Agents for the Applicant also state that anaerobic biodigester waste or “digestate” is planned to be land-applied on active farm fields.¹⁰ Based on information and belief, no detail, additional or supporting information relative to digestive land application were provided within the CU application.¹¹ *Failure to identify digestive land application locations, application rates, site evaluations (i.e., crop management plans/agronomic rates, etc.) associated with the proposed Conditional Use is required by the Sussex County zoning code, and it's absence renders the application incomplete as submitted and precluding Conditional Use approval.*

Finally, Agents for the Applicant assert that the AD will produce approximately 430,000 MMBtus per year of clean, renewable natural gas (RNG) to be sold and injected on-site into the natural gas pipeline distribution system, and that Chesapeake Utilities Corporation is “currently envisioned” as BDG’s partner in this project.¹² Based on information and belief, no detail, additional or supporting information relative to RNG distribution and/or pipeline location(s) were provided within the CU application.¹³ *Failure to adequately detail the RND pipeline and its required infrastructure within the proposed Conditional Use is required by the Sussex County zoning code, and it's absence renders the application incomplete as submitted and precludes Conditional Use approval.*

¹⁰ Bioenergy Devco Conditional Use Exhibit Book, CU No. 2258, February 11, 2021, pp. 9 & 12-13.

¹¹ *Ibid.*, pp. 10-12.

¹² Duffield Associates, April 10, 2020, p. 7.

¹³ *Ibid.*, pp. 10-12.

3) **Environmental Impact from the Proposed Conditional Use.**

The Applicant also states that feedstocks will enter the facility via Alt-13 and off-loaded within an enclosed receiving building under negative wire pressure. The material will then be pumped in to one of three above-ground mixing tanks and then to one of four on-site biodigester tanks - all tanks being completely enclosed to contain any odors.¹⁴

Agents for the Applicant state that existing air permit, State of Delaware, APC-2016/0093 “will be modified and updated” to incorporate proposed new air emission point sources, including a flare, boiler, thermal oxidizer and optional heat/power system.¹⁵ Applicant’s agents further state that potential odor issues will be mitigated “through controlled handling of feedstock materials” - with providing any detail or additional supporting plans or data.¹⁶ *“Upsets” from tail gas flaring operations, i.e., episodes of incomplete combusting due to variance in waste stream moisture, are typical within the oil and gas and other industries, and we are concerned about the likelihood of nuisance odors generated by and emanating from the proposed CU. Failure to adequately address air emission and permitting within the proposed Conditional Use application is required by the Sussex County zoning code, and its absence renders the application incomplete as submitted precluding Conditional Use approval.*

For the above reasons, we strongly recommend that the Sussex County Planning & Zoning Commission deny the proposed BDG/Devco CU permit application as submitted.

If you have any questions regarding these rebuttal comments, please feel free to contact me at 231-499-7165 or cgrobbel@grobbelenvironmental.com. Thank you.

Sincerely,

Grobbel Environmental & Planning Associates



Christopher P. Grobbel, Ph.D.
Community Planner/Sr. Project Manager

Other References

Bioenergy Devco Conditional use Exhibit Book, CU No. 2258, February 11, 2021.

¹⁴ *Ibid.*, pp. 7-8.

¹⁵ Duffield Associates, April 10, 2020, p. 3.

¹⁶ *Ibid.*

Written Public Comments Regarding Bioenergy Development Group, LLC DevCo
Submitted to Sussex County Delaware Planning and Zoning
Deadline for written comments: Wednesday February 10, 2021
Planning and Zoning Public Hearing: Thursday February 11, 2021

The following written comments were prepared for local community organizations in anticipation of submitting to Sussex County Delaware Planning and Zoning as part of the public record for the Public Hearing scheduled Thursday February 11, 2021. Documents reviewed in preparation of these comments include, but are not limited to, the Planning and Zoning agenda packets which contain the BioEnergy DevCo conditional use exhibit book, engineering plans and specifications, ordinances and prior conditional use permits related to the historical use of the property, and various application forms and supporting documentation.

The following Google Earth image shows the approximate footprint of the existing compost facility including the abandoned pellet facility area (long white building), the original triangular lagoon (green with algae), and the more recent addition of a massive outdoor composting area surrounded by an aerated stormwater lagoon system.

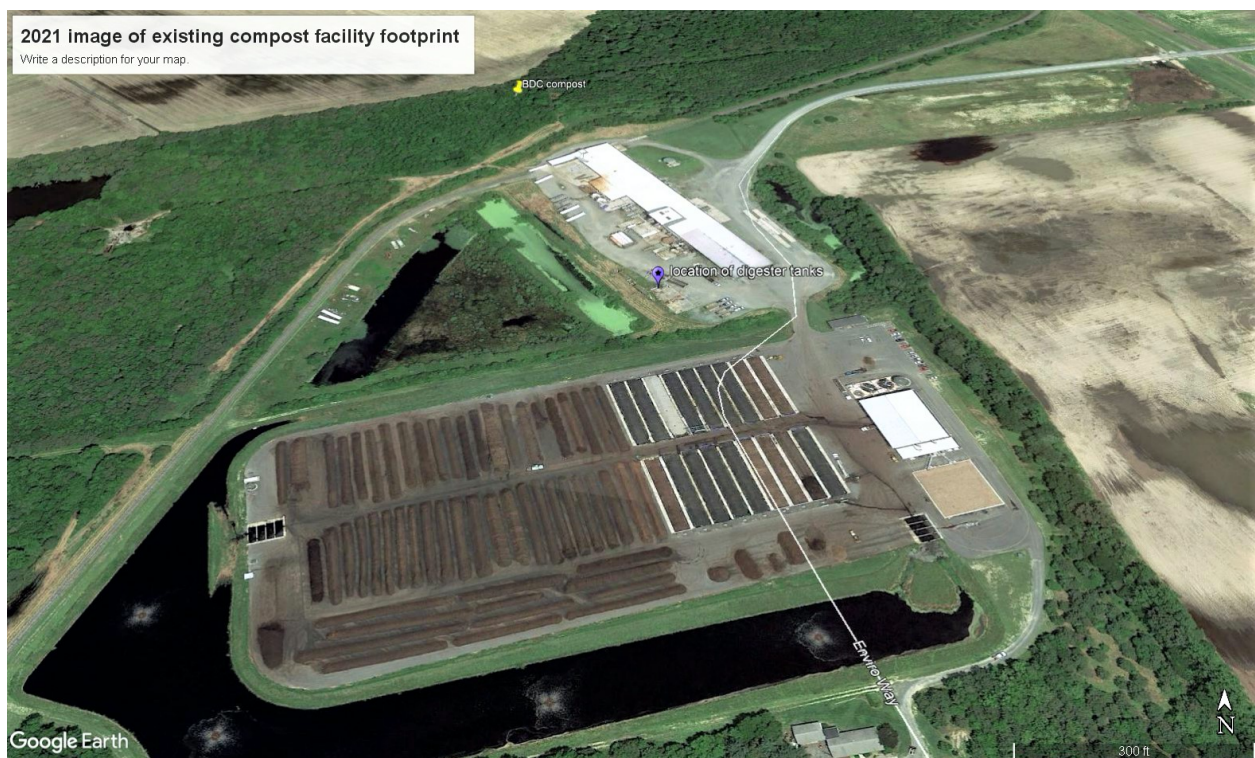


Figure 1 – Google Earth image of existing compost facility (2021)

1. Compliance issues at the existing compost facility

1a. Chromium VI in compost as identified in DNREC Secretary's Order dated May 2019 identified issues related to compost sampling data and the presence of Chromium VI at concentrations up to 24 mg/kg when the acceptable concentration was 0.29 mg/kg (which is 82 times more than allowed by law).

Considering Chromium VI is a known carcinogen to humans, the bigger question is what was the source of Chromium VI at the composting facility?

Poultry feed may contain chromium picolinate, but that oxidative state of chromium is considered a micronutrient and is known as trivalent chromium or Chromium III¹. A 2016 review published by the National Institute of Health states:

“Trivalent Cr is associated with the metabolism of carbohydrates, lipids, and proteins in animals termed as “glucose tolerance factor” since Cr regulates the metabolic action of insulin [11].”

The oxidative state of chromium VI or hexavalent chromium is highly toxic. The same 2016 review published by the National Institute of Health states:

“The hexavalent form of Cr has toxic effects on birds as it promotes the early aging process, reduces hatching ability and effects liver also [81]. It also causes malformation or fetal death and leads to neural deformities. It has damaging effects on DNA and leads to mutation. It affects the function of gastrointestinal microflora on chronic exposure to high dosages [82].

Will the proposed biogas facility continue to accept raw materials that contain this highly toxic heavy metal? Where is the hexavalent chromium coming from? Why would the county allow a facility to accept any waste that contains a significant level of a highly toxic and known carcinogen without completely understanding the source? How much of the hexavalent chromium ends up in the triangular lagoon and potentially the ground water under the facility?

The 2019 Secretary's Order indicated that the facility operated by AgriRecycle, LLC was not candid in its reporting of heavy metals in the finished compost, specifically hexavalent chromium. So not only is a highly toxic heavy metal in the finished compost, but the amount was obscured by the operator enough to warrant fines and a compliance order by DNREC.

¹ See NIH publication: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5234053/>

1b. The triangular shaped lagoon appears to be poorly maintained.



Figure 2 – Google Earth image of compost facility triangular shaped lagoon (2021).



Figure 3 – Google Earth image of compost facility triangular shaped lagoon (2005).



Figure 4 – Google Earth closeup of vegetative growth throughout lagoon area (2021).

The presence of bright green algae indicates the liquid portion of the triangular lagoon has excess nutrients. What is the source of nutrients into this lagoon area? Is this runoff from compost piles and if so, where were they located? A search through the years on Google Earth did not show any compost piles until the more recent expansion to the south of the triangular lagoon.

The 2005 Google Earth image shows the floor of the triangular lagoon is not lined with plastic but appears to be native earth. Even if there was an earthen liner constructed in 2005, the condition of the floor of the lagoon has fallen into disrepair and there is considerable amount of vegetation growth within it – which would destroy any efficacy of a liner to prevent groundwater pollution.

Does Sussex County know whether the existing facility has contributed to groundwater contamination? During the review of the proposed biogas facility, has the county requested information from DNREC about the concentration of nitrates, total dissolved solids, volatile organic compounds, and heavy metals in the groundwater under the compost facility? Considering the widespread issue of nitrate contaminated groundwater in Sussex County, the County needs to be hyperaware and vigilant when any new or existing source comes under review. *The community needs to know who is monitoring the groundwater under this facility and what the data says.*

2. Public Safety issues

2a. Truck traffic and lack of a traffic study related to increased trucks – It appears that both the applicant and the Delaware Department of Transportation has failed to provide satisfactory information about the potential truck traffic expected during the operation of the proposed biogas facility and how that truck traffic could impair roads. Rather than analyze the impacts to roads from increased truck traffic, attention has been placed on vehicle traffic. Vehicle traffic refers to automobiles, not heavy industrial trucks that carry significantly more weight than that of a normal automobile.

The January 16, 2020 letter from Delaware Department of Transportation (DelDOT) includes this statement in their review of the proposed biogas facility²:

“Our [DelDOT] volume-based criteria for requiring a traffic impact study (TIS), addressed in Section 2.2.2.1 of the Development Coordination Manual, are that a development generates more than 500 trips per day or 50 trips during a weekly peak hour. While it seems that the above criteria could be met, we presently cannot predict the site’s trip generation with enough accuracy to make a TIS useful.”

It appears that DelDOT did not address adverse road impacts resulting from an increase in truck traffic to and from the proposed biogas facility. Community members are concerned about increased truck traffic because it can damage roads, create unsafe driving conditions in the neighborhood, and incur new costs of repair to the county. How will Sussex County protect the quality of roads from the increase in truck traffic?

Truck traffic impacts are different than vehicle traffic as explained in this 2014 Journal of Infrastructure Systems article³:

“Damage to roads is affected by many factors, including truck weight and type, traffic patterns, construction material, drainage, and environmental conditions (Federal Highway Administration, 2000). A common approach for understanding the effects of weight loads on roadway pavement is to express all loads as equivalent single axle loads (ESAL), which represents a single axle load of 18,000 pounds (Pennsylvania Department of Transportation, 2010). The American Association of State Highway and Transportation Officials (AASHTO) has developed standard equations for estimating ESALS based on number of

² See pages 9-10 in Sussex County Planning and Zoning Packet 7 (158 pages total)

<https://sussexcountyde.gov/agendas-minutes/planning-&-zoning-commission>

³ See Estimating The Consumptive Use Costs of Shale Natural Gas Extraction on Pennsylvania Roadways: <http://ascelibrary.org/doi/abs/10.1061/%28ASCE%29IS.1943-555X.0000203>

axles, load weight, and pavement characteristics. A generally accepted approximation for the calculation of ESALs is the generalized fourth power law, which states that the damage caused by a particular load is roughly related to the load per axle by a power of four (AASHTO, 1993). Though previously challenged by scholars, it remains the most common approach and has proven to be fairly robust from a policy perspective (Johnsson, 2004). Examples for uses of this approximation to estimate road damage include Sathaye et al. (2010) and Belcheff and Associates (2010)."

And this:

"For different roadway types, vehicle weights, and axle combinations, the load equivalency factor (LEF) is the roadway damage caused by a single pass of each vehicle relative to the damage per single pass of an ESAL. The damage increases exponentially with vehicle weight. For example, on flexible pavement, a LEF for a roadway pass of a 3,000-pound single axle is 0.0011, the LEF for an 18,000-pound single axle is 1.0, and the LEF for a 30,000-pound single axle is 8.28 (Federal Highway Administration, 2011). This means that 18,000 pound and 30,000-pound single axle passes do about 900 times and 7,500 times more damage than a 3,000-pound single axle pass, respectively."

The applicant provides scant information about the expected truck traffic. In their document titled "BioEnergy DevCo Conditional Use Exhibit Book" submitted on February 2, 2021⁴. The exhibit book appears in both Packet #1 and Packet #7 with repetitive pages 5 through 10. In Packet #1, the exhibit book appears at pdf pages 323-345 and in Packet #7, the exhibit book appears at pdf pages 44-66.

The Exhibit Book page 12 correlates to pdf page 62 of 158 in Packet #7. On that page, there is a paragraph discussing truck traffic as follows:

"All incoming truck traffic will access the site from Seaford Road and turn onto Enviro Way. All Trucks leaving the site will use Enviro Way and turn onto Seaford Road. A separate administrative entrance is planned to be constructed to allow access to the site from Oneals Road. This administrative entrance will be used by all visitors and employees, and thus limit the Seaford Road entrance to commercial truck traffic. BDC anticipates approximately forty (40) trucks per day of organic feedstock material delivered to the Site for both the anaerobic digester and the composting facility. It is anticipated another five (5) trucks per day will move finished digestate solids and/or compost. Total vehicle trips per day are expected at less than 200 and therefore a traffic impact analysis was not required by DelDOT. A permit for entrance construction has been issued by DelDOT."

⁴ See pages 44-68 Planning and Zoning hearing Packet #7 (158 pages total)

<https://sussexcountyde.gov/agendas-minutes/planning-&-zoning-commission>

The residents who live in the surrounding community are not satisfied with such a vague representation of how truck traffic will change with the operation of the proposed biogas facility. For example, there is no reference to the current truck traffic numbers nor any discussion of the expected increase from that number.

The author of the Exhibit Book seems to equate the impact of trucks to that of automobiles when quoting the DelDOT trigger of < 200 vehicles per day used to determine if a traffic impact study is required.

The Sussex County/Delaware Department of Transportation MEMORANDUM OF UNDERSTANDING FOR LAND DEVELOPMENT COORDINATION⁵ defines traffic analysis and impact studies as follows:

“PRELIMINARY TRAFFIC ANALYSIS – A request made by Sussex County Planning and Zoning Department for an evaluation by DelDOT, in terms of the proposed trip generation, to determine the Traffic Impact with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day.

MINOR - The proposed land use is expected to increase the trip generation of the subject land by at least 50 vehicle trips in any hour but fewer than 200 vehicle trips in any hour or at least 500 vehicle trips per day, but fewer than 2,000 vehicle trips per day.

MAJOR - The proposed land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.”

When reading this Memorandum, it seems clear that the focus is more on increased automobile traffic associated with housing subdivisions or commercial venues, rather than the impacts to traffic and roads due to heavy commercial trucks. If it were, there

⁵ See documents at: <https://sussexcountyde.gov/sussex-county-deldot-initiatives>

would be mention of the equivalency between an automobile and a truck that considers weight and number of axles as described in the Journal of Infrastructure Systems mentioned earlier in these public comments.

If we look at the trucks used to bring poultry litter to the facility, a typical poultry litter truck would carry 25 tons of litter (50,000 pounds plus the weight of the truck). The current composting operation processes 30,000 tons per year. Assuming the entire 30,000 tons per year is poultry litter then 30,000 tons per year divided by 25 tons per truck would be 1200 trucks per year or about 5 trucks per day.

The proposed facility would increase truck traffic from 5 trucks per day to 40 trucks per day. If those 40 trucks per day only contained poultry litter, then one would expect an estimate of 40 trucks x 25 tons per truck = 1000 tons per day poultry litter. Assuming operations of 5 days per week, 52 weeks per year – there would be 5000 tons per week and 260,000 tons per year of just poultry litter.

The biogas facility intends on processing DAF and other poultry processing wastewaters and it is unclear in the application how many truckloads of that waste will be part of the 40 trucks per day.

Considering a 30,000-pound single axle truck causes 7500 times more damage than a 3000-pound automobile, the County and the State should definitely try to assess the damage associated with poultry litter trucks carrying 50,000 pounds of litter plus the weight of the truck.

The community is concerned that the County has not required the applicant to provide a more detailed list of type of truck, number axles, weight, contents carried (litter, DAF waste, soybean waste, and other poultry processing waste).

Truck traffic related to natural gas transportation was mentioned in a Bioenergy Innovation Center Discovery Day video. The BioEnergy Innovative Center representative stated that the methane would be trucked from the facility.⁶ The County needs to ask DeIDOT if they were aware of the use of trucks to transport methane gas from the facility when they wrote their letter on January 16, 2020.

⁶ See video at: <https://www.bioenergyic.com/discovery-day>

2b. Explosive potential of digesters

The applicant professes a spotless record with respect to explosions at any of their 225 plants worldwide⁷. However, the applicant does not provide the names and locations of any of the facilities so that one might research the truthfulness of that statement.

Explosions can occur at biodigester projects⁸, such as this biodigester associated with a dairy farm in Wisconsin:

“A 1.25-million gallon manure digester near Waunakee won’t resume operations until authorities determine the cause of an explosion and fire that destroyed its outer roof early Wednesday, sending up a plume of smoke visible for miles.

The blast was the latest in a series of problems at the Clear Horizons LLC biodigester, which generates electricity by burning methane that bubbles out of farm manure.

The explosion and fire destroyed a \$250,000 nylon inflatable cover over one of the three digesters on the site, said Dane County Sheriff’s Office spokeswoman Elise Schaffer. No injuries were reported. Crews from Waunakee, Dane and DeForest fire departments responded.

Employees had emptied the digester so they could clear material that was blocking flow to an underground pipe, and on Wednesday were preparing to remove water that had accumulated between the outer cover and an inner roof below it, said Jim Ditter, chief executive officer for PPC Partners Inc., which owns Clear Horizons.

The explosion and fire happened as an employee on the ground started an electric blower, leading to speculation that it somehow ignited methane gas, Ditter said. He said the digester will remain out of commission until officials are sure it’s safe to operate.”

Another example of a biodigester explosion can be found in this article about a manure digester in Oregon that had a failure in headspace cap⁹ on their digester:

“Revolution Energy Solutions (RES), the company that owns and operates the digester. “We know what component failed, but we don’t know exactly what the ignition source was. What we believe it to have been was static electricity.”

RES worked with Bielenberg [Oak Lea Farms] over the past two years to commission the low-temperature anaerobic digester that processes up to 30,000

⁷ See pdf page 63 of 158 Packet #7 or page 13 of the BioEnergy DevCo Conditional Use Exhibit Book

⁸ See news article at: https://madison.com/wsj/news/local/environment/blast-destroys-roof-of-troubled-biodigester-near-waunakee/article_4e5a7c0a-3a39-5b90-a225-b99dabfd37d1.html

⁹ See https://www.tpomag.com/online_exclusives/2013/03/epdm_failure_causes_anaerobic_digester_explosion

gallons of manure per day to create methane gas, which fuels generators and produces electricity.

RES uses an EPDM (ethylene propylene diene monomer rubber) inflatable membrane material for headspace gas storage on the tanks. “We accumulate the biogas there and then we pull it off of that headspace to consume it in the engine. For whatever reason, that EPDM failed. When the EPDM failed, the biogas that had accumulated escaped.

“The gas that was in that headspace combusted rather than going down the gas train to the engine or any other location. During that process, you have to have the exact combination of ambient air and methane for it to be combustible. It came in contact with some ignition source.”

The information provided in the Exhibit Book under the heading “gas and safety” is vague, without detail, and provides no information on what parts of the design have explosive risk, what that risk is and how the operation of the facility will monitor and prevent mishap. For example, they say the ‘anaerobic process is a completely enclosed process’ as if that means something about safety. Of course, anaerobic digesters are completely enclosed – that is how they work – they work without undue influence of air. It is the very nature of being enclosed and generating methane gas that makes a digester an explosive hazard.

Rather than rely upon a glossy brochure presentation, the county should insist on more details. The community wants to know details related to radius of impact should an explosion occur and what types of pressure gauges, alarms, and evacuation plans would be used at the facility. The County must insist on a detailed Fire Protection Plan and Explosive Risk Evacuation Plan. The community needs to know how much risk the facility poses and how the facility and the County are going to protect the families who live and work in close proximity.

The applicant claims it will ‘comply with all required safety and emission standards’ yet does not provide even a citation of what safety standards they are referring to and how those standards will protect from explosion or release of toxic gases from the digesters or even the gas pretreatment processes and pre-market gas pipeline.

The applicant asserts that have extensive experience with biodigesters worldwide, so they should be familiar with explosive hazard requirements in Europe. An assessment of biogas potential hazards published in the 2012 International Journal of Engineering provides this commentary about hazard zones¹⁰:

¹⁰ See journal article: <http://annals.fih.upt.ro/pdf-full/2012/ANNALS-2012-2-03.pdf>

“European Directives for controlling explosive atmospheres is named ATEX. ATEX contain two directives (Health & Safety Executive, 2010): 1) Directive 99/92/EC (also known as 'ATEX 137' or the 'ATEX Workplace Directive') on minimum requirements for improving the health and safety protection of workers potentially at risk from explosive atmospheres. 2) Directive 94/9/EC (also known as 'ATEX 95' or 'the ATEX Equipment Directive') on the approximation of the laws of Members States concerning equipment and protective systems intended for use in potentially explosive atmospheres.

Spaces with risk of explosion are graded in zones according to the probability of the occurrence of a dangerous explosive atmosphere. If a dangerous explosive atmosphere can occur in a space, the entire space is to be regarded as highly explosive (Figure 2).

Zone 0 covers spaces with a constant, long-term, or frequent (most of the time) dangerous explosive atmosphere which consists of a mixture of air and gases, vapors, or mists.

In biogas plants, the gasholder, the air intake of the combustion engine, the combustion chamber of the gas flare, and under special operating conditions the bioreactor itself belong to zone 0. A special operating condition is given when air enters the interior of the bioreactor. Under normal operation conditions, a small positive pressure prevents the penetration of air into the bioreactor.”

At the very least, the County should require a map of the proposed digester area that shows various explosive hazard risk zones within the proposed facility and indicate the exact procedures and equipment used to monitor the area with respect to gas leaks, gas pressure changes, and alarms. The County should require more than a vague paragraph from the applicant when it comes to discussing methods of public safety.

The County should require the applicant to identify all residential areas within one mile of the facility and provide a Community Protection Plan that details how the people will be informed should an accident occur at the biogas digester and the gas treatment area used to clean the biogas prior to sale to Chesapeake Utilities.

2c. Natural Gas line infrastructure

The entire premise of this proposed biogas facility is to produce methane that can be sold into a market gas pipeline. However, the application narrative does not adequately describe how and where the gas will be transported within the facility, where it will be scrubbed of impure gases and moisture, and where it will be compressed to meet the pressure demand of the market gas pipeline. In Packet #1 (pdf page 290 of 350), the

Duffield Associates cover letter to the Preliminary Site Plan dated April 10, 2020 includes this statement about ‘injecting on-site into the natural gas pipeline’ as follows:

“Using the former pelletizing plant and its existing operations building as well as surrounding supportive infrastructure, BDG is developing a poultry industry centric anaerobic digester (AD) which will process up to 200,000 metric tons per year of poultry DAF and additional poultry industry waste (generated by Perdue and other industry companies). The AD will produce approximately 430,000 MMBtus per year of clean, renewable natural gas (RNG). The RNG will be sold and injected on-site into the natural gas pipeline distribution system displacing an equal amount of fossil fuel derived natural gas. Chesapeake Utilities Corporation is currently envisioned as BDG’s partner regarding RNG.”

In the Discovery Day videos produced by Bioenergy Innovation Center, there is one video that discusses the site plan of the facility and at minute mark 0:51 it states that the biogas from the digesters will be directed to ‘biogas conditioning skids’ located north of the four digester tanks. The BTS technician explains in the video that the methane will be separated from the carbon dioxide and says the methane ‘will be the renewable natural gas that can be trucked and taken off-site.’¹¹ It should be noted that the trucks associated with transporting methane gas were not mentioned in any of the truck traffic discussions. The video fails to address what will happen to the CO₂ that is removed from the biogas stream at the ‘biogas conditioning skids’.

The application does not include a letter of commitment from Chesapeake Utilities detailing how and where they will clean the gas, truck the gas, and/or inject the gas into a market pipeline.

The County must require a Tank Plan for all the flammable and/or combustible liquids and gases that would be stored at the proposed facility. According to the Delaware State Fire Marshall website¹²:

“A [Tank Plan Submittal](#) is required for all flammable and/or combustible liquids and/or gas installations, such as fuel dispensing, aboveground tanks, and propane. The installation is reviewed for compliance with Delaware State Fire Prevention Regulations and National Fire Protection Association, such as distances to property lines and secondary containment. A final inspection may be required prior to use.”

¹¹ See Anaerobic Digestion Plan video at: <https://www.bioenergyic.com/discovery-day>

¹² See website: <https://statefiremarshal.delaware.gov/technical-services/plan-review/>

3. Environmental issues

3a. Wastewater pretreatment is proposed in the BioEnergy DevCo Conditional Use Exhibit Book (Packet #7 pdf page 64 of 158) on page 14 where it asserts:

“The wastewater treatment program consists of two equally sized systems, when fully built out, they are each designed to treat approximately 140,000 gallons per day. The wastewater passes through a mix tank and into an anoxic reactor via screening and micro-screening to remove particulate or suspended solids. After the anoxic reactor, the wastewater passes through two aerobic reactor tanks in parallel where antifoam sprayers are used as needed and then is stored in the ultrafiltration feed tank for a short duration.

From the UF feed tank, the liquid is pumped into and treated by an ultrafiltration unit followed by treatment with a reverse osmosis unit. The wastewater is then cooled and stored for discharge to Sussex County via a forced main connection from the plant to the Sussex County wastewater system. The total discharge to Sussex County is estimated to be 60,000 gallons per day when plant is fully built out. The wastewater makeup while being finalized will readily meet all county standards and we are currently in discussions with Sussex County about becoming a customer and utilizing a County facility for discharge.”

There are numerous problems with this description provided in the Exhibit Book. One of the most troubling problems is the vague reference to a Sussex County sewer and/or wastewater system that could receive the treated wastewater. If a forced main is located near the facility, why not identify it specifically in the narrative?

The applicant does not provide any correspondence between BDG, LLC and Sussex County that could confirm the pursuit of disposal by publicly owned sanitary sewer and treatment plant. Not knowing where or how this wastewater is going to be disposed of is of great concern to the community. If you assume operation of 5 days per week and 52 weeks per year, the 60,000 gallons per day would be 15,600,000 gallons of wastewater annually. At the final throughput of 140,000 gallons per day, that would equal 36,400,000 gallons of wastewater per year unaccounted for in the proposal.

The second problem is that the description refers to meeting all ‘county standards’ when actually an industrial discharge to a sanitary sewer would need to meet all state and federal pretreatment standards so that the ‘county wastewater system’ doesn’t violate its own wastewater discharge permit limitations. Other concerns relate to the absence of information about the additional sanitary wastewater generated by the new

employees. The current compost facility utilizes on-site sanitation for about a dozen employees, but the proposed facility claims to add another 40 employees (and thus the additional sanitary wastewater).

3b. Proximity to Gum Branch tax ditch

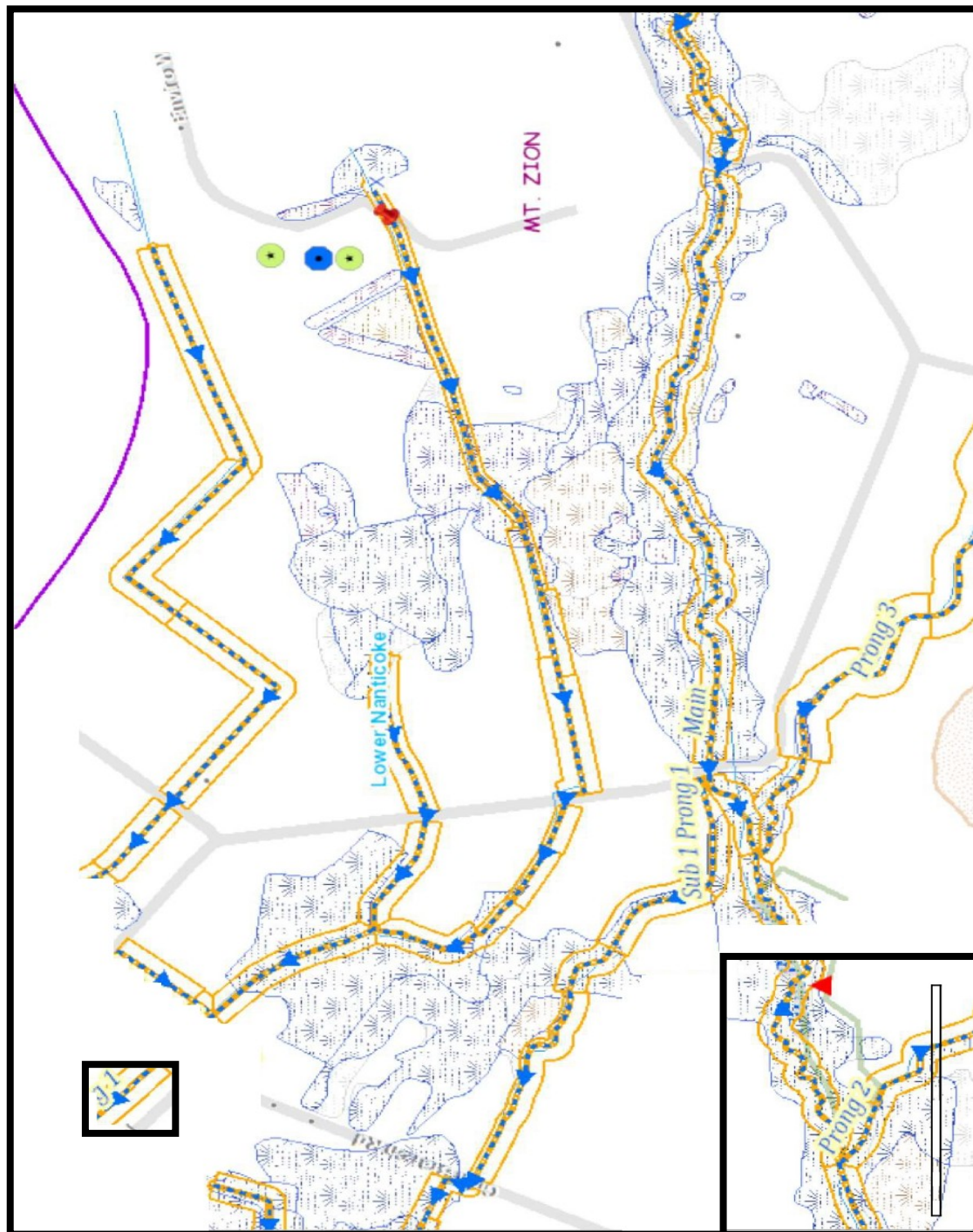


Figure 5 – Wetland Map showing location of Prong and Sub-Prong portions of Gum Branch Tax Ditch

4. Environmental Justice

Using USEPA's EJScreen mapping tool, we identified the demographic indicators within a 2-mile radius of the proposed biogas facility. Within that distance, 41 percent of population is minority, 44 percent are low income, 4 percent are linguistically isolated, 18 percent have less than high school education, 9 percent are less than five years of age, and 15 percent are over 64 years of age.¹³

The surrounding area includes over a dozen poultry CAFOs that generate harmful and uncontrolled air pollution in the form of particulates, ammonia, and volatile organic compounds.

To whom can these communities turn for relief from not only the air and water pollution that already exists, but from any future sources of pollution?



Figure 6 – Google Earth image of surrounding communities (2018)

¹³ See EPA EJScreen website: <https://www.epa.gov/ejscreen>

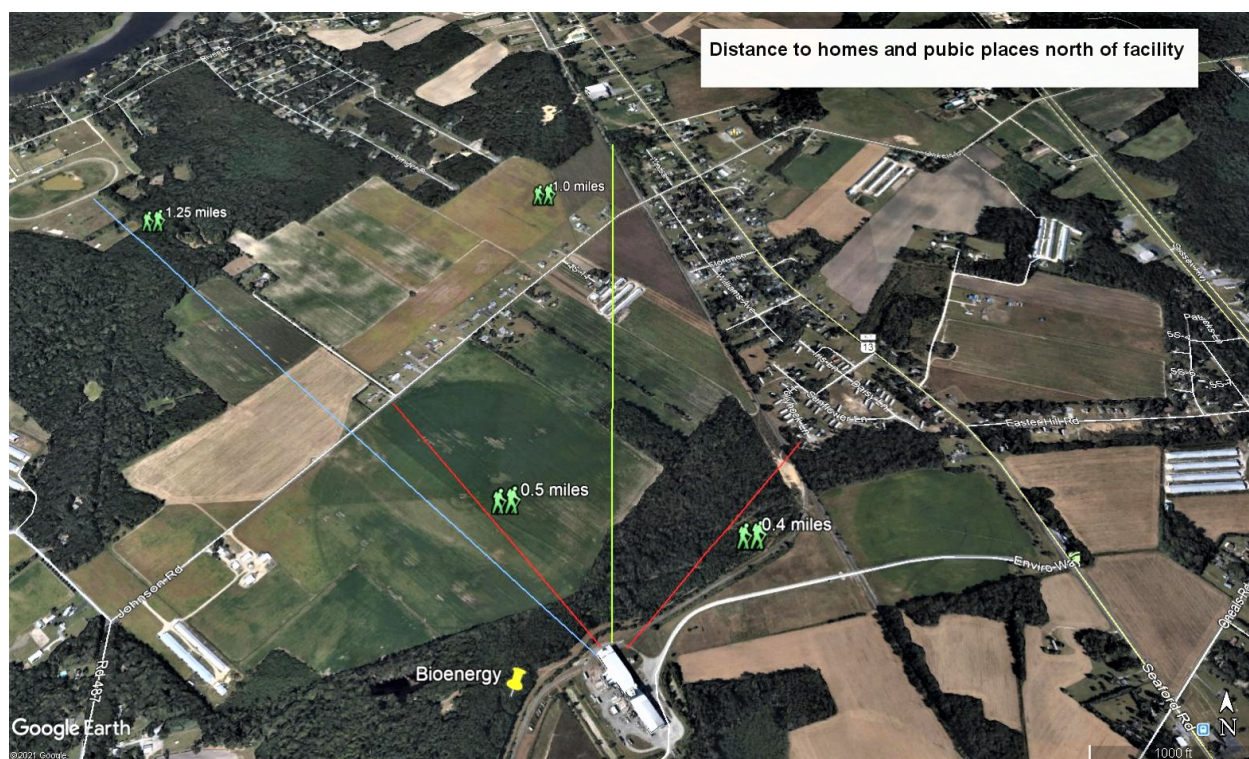


Figure 7 – Google Earth image Distance to homes and public places north of facility.



Figure 8 – Google Earth image Residential area half mile northeast of the facility.



Figure 9 - Google Earth image Homes on Johnsson Road half-mile north of facility.



Figure 10 – Google Earth image Homes on Road 487 half-mile west of facility.



Figure 11 – Google Earth image Residential and Public Places northwest of facility.

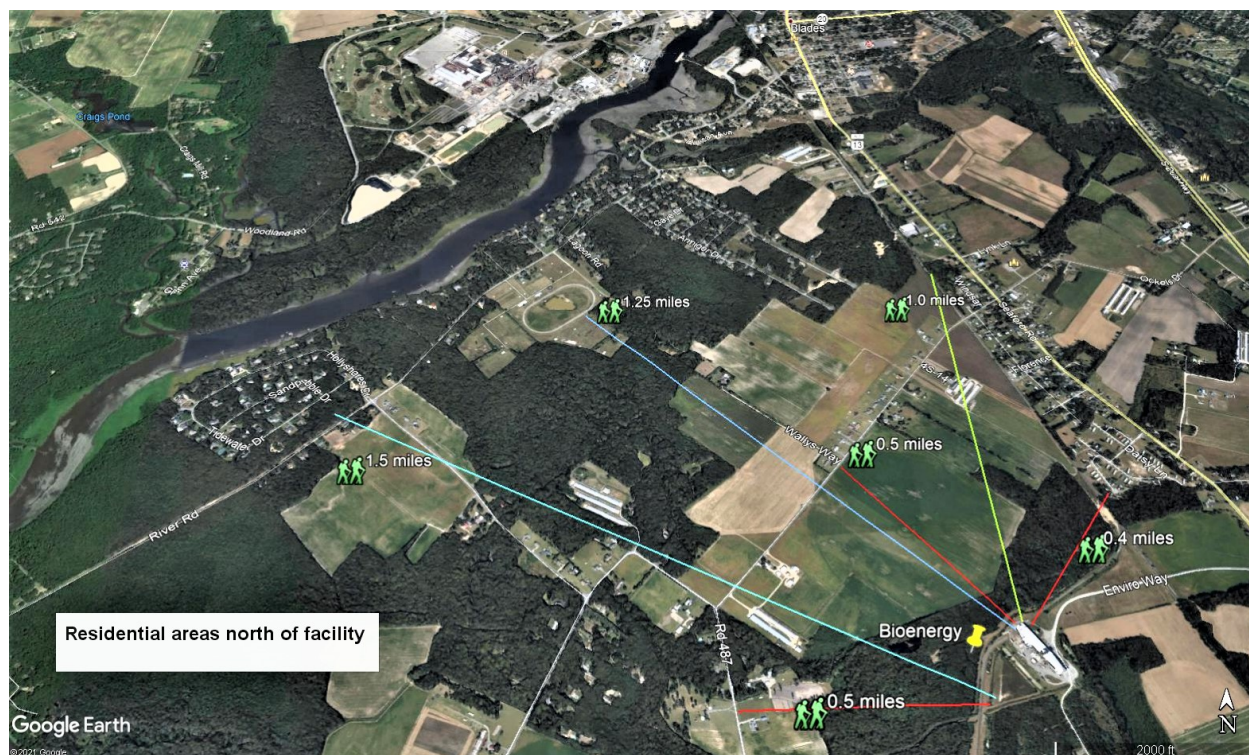


Figure 12 – Google Earth image Residential areas with 1.5 miles north of facility.



Figure 13 – Google Earth image Residential areas within 1.5 miles southeast of facility.

Jamie Whitehouse

From: E Lee <eulmlee@gmail.com>
Sent: Monday, March 15, 2021 3:39 PM
To: Michael H. Vincent; Cynthia Green; Mark Schaeffer; Doug Hudson; John Rieley
Cc: Planning and Zoning; Jamie Whitehouse
Subject: Biogas (CU 2258) Comments - Traffic Analysis

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good afternoon,

I have been trying to understand this application, with limited knowledge of AD. So, I read the 180 pages of Council packet that is on

https://sussexcountytde.gov/sites/default/files/packets/CU%202258%20Bioenergy%20Development%20Group%2003.16.2021%20CC%20Paperless%20Packet_0.pdf

I have several questions, but here I address my traffic questions. From DelDOT's recent Coastal Corridors Study workshop, I learned that Rt 13 is a heavily trafficked, crash-prone highway.

When I refer to the page numbers below, it is the page number out of the 180 pages of the online packet as of last night. I found this morning that the page numbers in the packet were not exactly the same as last night.

I include the clippings from the packet to back up what I am quoting. Since the letters in the clippings from the packet are mostly in black, I am writing in brown color.

What I quote from the packet (clippings) is in purple.

Page 99 - Traffic in Bioenergy Presentation Deck

-
- 40
- trucks per day of organic feedstock material delivered to the site for both the AD and the composting facility.
-
-
- 5
- trucks per day to move finished digestate solids and/or compost.
-

"Total vehicle trips per are expected at less than 200 and therefore a traffic impact analysis was not required by DelDOT"

to providing a space for future job training and research.

DESIGN CONSIDERATIONS

TRAFFIC

All incoming truck traffic will access the site from Seaford Road and turn onto Enviro Way. All Trucks leaving the site will use Enviro Way and turn onto Seaford Road. A separate administrative entrance is planned to be constructed to allow access to the site from Oneals Road. This administrative entrance will be used by all visitors and employees, and thus limit the Seaford Road entrance to commercial truck traffic. BDC anticipates approximately a forty (40) trucks per day of organic feedstock material delivered to the Site for both the anaerobic digester and the composting facility. It is anticipated another five (5) trucks per day will move finished digestate solids and/or compost. Total vehicle trips per day are expected at less than 200 and therefore a traffic impact analysis was not required by DelDOT. A permit for entrance construction has been issued by DelDOT.

Page 74 - DelDOT site permitting

Vehicles using site includes:

- Employees - About 30+ new employees for the AD facility (on page 89 of the packet)?
- Feedstock delivery - 40 trucks/day - What type of vehicles?
- Finished compost pick up - 5 trucks/day - What type of vehicles?
- Treated Wastewater transport - what type of vehicles, how many/how often?
- CNG - what type of vehicles, how many/how often?

SITE PERMITTING - DELDOT



- Projected ADT below 200 vehicle threshold to require traffic impact study and consistent with previous conditional use.
- Vehicles using site include:
 - Employees
 - Feedstock delivery
 - Finished compost pick up
 - Treated wastewater transport
 - CNG
- Have received Letter of No Objection from DelDOT
- Have received Entrance Improvements Approval from DelDOT

"Because the proposed land use would generate fewer than 50 vehicle trips per day, we consider the development's traffic impact to be diminutive in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application."

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NICOLE MAJESKI
SECRETARY

February 11, 2021

Mr. Jamie Whitehouse, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Mr. Whitehouse:

This letter is to update and replace our letter (copy enclosed) of January 16, 2020, in keeping with the current memorandum of understanding between DelDOT and Sussex County.

The Department has completed its review of a Service Level Evaluation Request for the Bioenergy Development Group, LLC conditional use application, which we received on December 17, 2019. This application is for an approximately 198.48-acre assemblage of parcels (Tax Parcels: 132-6.00-88.01, 132-6.00-95.00 & 132-11.00-41.00). The subject land is located on the north side of Oneals Road (Sussex Road 485) and west of Seaford Road (Sussex Road 13), approximately 350 feet southwest of the intersection of Seaford Road and Easter Hill Road (Sussex Road 485A), south of the City of Seaford. The subject land is currently zoned AR-1 (Agricultural Residential) and the applicant is seeking a conditional use approval.

Per the 2019 Delaware Vehicle Volume Summary, the annual average daily traffic volume along the segment of Seaford Road where the subject land is located, which is from East 10th Street in Blades to the north Laurel limits, is 4,280 vehicles per day. As the subject land also has frontage along Oneals Road, the annual average daily traffic volume along that road segment is 1,937 vehicles per day.

Based on our review, we estimate that the above land use will generate fewer than 50 vehicle trips per day. This number of trips is below DelDOT's minimum warrants for determining that a Traffic Impact Study (TIS) should be required for a particular development. DelDOT's regulations specify the minimum TIS warrants as 50 vehicle trips in any hour and/or 500 vehicle trips per day. Because the proposed land use would generate fewer than 50 vehicle trips per day, we consider the development's traffic impact to be **diminutive** in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application. DelDOT's description of this application as diminutive with regard to warranting a TIS does not mean that it is diminutive in



Page 99 does not include employee vehicles, CNG tankers and treated wastewater transfers that are included in the DelDOT Permitting.

So, here are my questions:

- I do not understand how all these are expected to generate less than 50 vehicle trips per day - based on DelDOT (page 12).

- Doesn't each vehicle coming in and out count as two vehicle trips? This means DelDOT expects less than 25 vehicles per day generated by this application?
- What makes up a vehicle trip? A passenger car, a pickup truck or a gas tanker? Do they all count as the same vehicle trip?

Thank you for your time.

Best,

Eul Lee (Lewes)

Lauren DeVore

From: E Lee <eulmlee@gmail.com>
Sent: Monday, March 15, 2021 4:21 PM
To: Michael H. Vincent; Cynthia Green; Mark Schaeffer; Doug Hudson; John Rieley
Cc: Jamie Whitehouse; Planning and Zoning
Subject: Biogas (CU 2258) Questions - Economic Benefits vs. Future Burdens

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good afternoon,

My questions regarding economic benefits to Delawareans:

- Will they use local trucking businesses and construction companies to help people living in Delaware?
- Does Bioenergy have any plans to train the locals to hire for high paying jobs, or they will bring high-tech employees from elsewhere? Or, the locals fill the jobs that pay low wages?
- How much does the County expect to gain, as tax, etc., from this operation?
- Is Bioenergy receiving any subsidies from the State?

My real question is: **Are there any hazardous liability or future burdens that the County and the State may have to take in the long run?**

If they bring the chicken waste from all over Delmarva, and possibly from North Carolina (based on a recent article), to process them in Sussex County, even after extracting the methane gas, compost and pellets, there are still large quantity of wastes to be disposed of in Sussex County. Isn't this a huge burden for Sussex County? How do we ensure the bays and groundwater will not be adversely affected by this huge operation?

(Sussex County keeps expanding the wastewater treatment facilities to accommodate its fast growth. Recently, Pelican Points residents (in Millsboro) were complaining on Nextdoor about the sewage smell coming from Inland Bays facility. We need to leave plenty of room for emergency and unexpected situations. Please do not fill those facilities to capacity.)

I can understand the argument that AD benefits the chicken industry a great deal by taking care of its headache. However, I am not sure taking in other areas' waste here and taking care of their headache is the responsible thing to do for the local residents and our children.

If the AD is so beneficial and Dogfish Head Brewery is utilizing it, why not disperse the operation in smaller scale so that the local wastes are taken care of locally. This will reduce the long distance truck/trailer traffic and potential large-scale hazards on a concentrated area.

Thank you for your time.

Eul Lee (Lewes)

Jennifer Norwood

From: scdoterra59@gmail.com@mg.gospringboard.io on behalf of Susan Clifford <scdoterra59@gmail.com>
Sent: Monday, March 15, 2021 12:44 PM
To: Planning and Zoning
Subject: Chicken factory farm biogas

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Dear Sussex County Planning and Zoning Commission and County Council,

Bioenergy Development Group and Perdue Farm's proposal to construct a massive methane digester near Seaford, Delaware, must be denied.

This industrial gas production facility would pose a danger to local residents and would pollute the surrounding air and water. Additionally, using precious freshwater resources to liquify chicken litter to generate methane, as Bioenergy pushes for here, will also lead to highly soluble end products and make the pollution it contains more likely to pollute local waterways -- such as Gum Branch and the Nanticoke River.

Building this massive digester and gas production facility would disproportionately harm communities of color nearby. People living in these communities already bear a heavy burden associated with the air and water pollution, health impacts, and significant harms to quality of life caused by Perdue's factory farms. The proposed explosive and dangerous gas facility would only intensify these impacts.

Perdue's factory farms already pose a huge threat to public health and clean water in our region, but especially Sussex County. Permitting Bioenergy to profit off of their waste products is irresponsible and unconscionable.

Sussex County officials have a duty to protect residents from air and water pollution, not create a dumping ground for chicken factory farm waste. This gas facility would entrench the industry for decades so Perdue can make money off its manure mismanagement. I urge you to deny the conditional use application for Bioenergy.

Sincerely,

Susan Clifford

Jennifer Norwood

From: slcdoterra59@gmail.com@mg.gospringboard.io on behalf of Fred Vanoni <slcdoterra59@gmail.com>
Sent: Monday, March 15, 2021 12:47 PM
To: Planning and Zoning
Subject: Chicken factory farm biogas

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Dear Sussex County Planning and Zoning Commission and County Council,

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This industrial gas production facility would pose a danger to local residents and would pollute the surrounding air and water. Additionally, using precious freshwater resources to liquify chicken litter to generate methane, as Bioenergy pushes for here, will also lead to highly soluble end products and make the pollution it contains more likely to pollute local waterways -- such as Gum Branch and the Nanticoke River.

Building this massive digester and gas production facility would disproportionately harm communities of color nearby. People living in these communities already bear a heavy burden associated with the air and water pollution, health impacts, and significant harms to quality of life caused by Perdue's factory farms. The proposed explosive and dangerous gas facility would only intensify these impacts.

Perdue's factory farms already pose a huge threat to public health and clean water in our region, but especially Sussex County. Permitting Bioenergy to profit off of their waste products is irresponsible and unconscionable.

Sussex County officials have a duty to protect residents from air and water pollution, not create a dumping ground for chicken factory farm waste. This gas facility would entrench the industry for decades so Perdue can make money off its manure mismanagement. I urge you to deny the conditional use application for Bioenergy.

Sincerely,

Fred Vanoni

From: Shelly Cohen <noreply@forms.email>
Sent: Monday, March 15, 2021 4:22 PM
To: Todd F. Lawson <tlawson@sussexcountyde.gov>
Subject: Contact Form: DevCo Biogas

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Name: Shelly Cohen
Email: philliegyrl1968@gmail.com
Phone: 664-2929
Subject: DevCo Biogas
Message: Dear County Council

I'm writing today to oppose the application for the Conditional Use No. 2258 filed on behalf of Bioenergy Development Group, LLC

During the P & Z hearing there were less than 10 letters for this DevCo Biogas operation. Not surprisingly, all were either conglomerates from out of state or DE State Senators, Representatives or local political influencers.

The letters against the project were about 140. Your packet shows an increased number. The number of pages representing those letters is 368. All well thought out and some were scientific and technical. The DevCo attorney dismissed the validity of these letters.

The Planning and Zoning Commission should have declined this application for the following reasons:

1- Applications were incomplete. The actual ownership of this business is not clear so responsibility and/or complete evaluation of risk are not reflected in the documents.

The description of the actual business operation/activities were misrepresented to Sussex County P & Z, Deldot and other agencies on those official submitted documents.

The description of the main materials were described as Chicken Litter while the actual main ingredient is DAF. The "Sell" or "Pitch" was DevCo BioEnergy would solve the County's huge problem of disposal of massive tonnage of Chicken Manure/Litter during a conversion process Renewable Biogas - Methane.

Of course this appeals to local and neighboring Industrial Chicken Growers/Farmers. However this is not true. In the hearing, the DevCo attorney and executives admitted that Chicken Litter Will Not Be Used! It will not help the farmers.

It does help the Chicken Integrators. The massive multi Billion dollar entities that slaughter and process chickens. The integrators have the ongoing problem of DAF (Dissolved Air Flotation), a substance collected from the chicken processing wastewater containing fats, blood, chicken parts & unnamed polymers and other chemicals. This DAF problem could be solved by these Integrators by upgrading their wastewater treatment systems, a business expense they do not want to incur.

The benefit is to the Integrators not the Chicken farmers. Megatons of chicken manure will

remain all over Sussex County.

2- The company's marketing arm claimed thousands of jobs will be created by this Biogas operation. Sussex needs jobs, but this industry will Not be employing large numbers of people from the county.

Instead it will be a small number of jobs, possibly 30 to 50. DevCo will need to bring in the highly trained and educated personnel from other states or country's. Those remaining unskilled labor will be on the very low range of the pay scale and probably with the most exposure to hazards and pathogens.

4- What about the Environmental damage and cost?

County is already burdened with highly polluted waters. This operation is located in the already challenged Nanticoke watershed and a short distance from the town of Blades. You may remember the town was found to have it's water supply contaminated. You may remember that in 2018 Blades residents were told to stop drinking municipal water after elevated levels of toxic per- and poly-fluoroalkyl substances (PFAS)—specifically PFOS and PFOA—were found in public and private wells there. A problem that will live in perpetuity. No one knows the ongoing implications to health and environment.

The County has the obligation to ask questions about the impact of the air emissions, pollution discharge into any water system, natural or municipal and land application of the Biogas processing waste.

This risk evaluation has not been made; Documents are incomplete; Essential questions were not asked; Adequate financial responsibilities in the form of multi-million dollar Bonds and/or insurance coverage verifications were not obtained.

At the hearing, the company acknowledged dependence on the existing wells, septic and waste lagoon. So, what happens to the waste & wastewater? How does the escaping gas affect the air quality for the people who live in this unincorporated area of Seaford?

A desire to have sewage lines installed was expressed. That is a huge cost and it is a long way to the municipal system in Seaford. No one commented on the Seaford Sewage system's capability to process industrial waste with municipal waste. Most municipal systems cannot do this by design and Federal law.

Solid waste with those Unknown Chemicals do not seem to concern the company, it's representatives or the commission.

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You must say "NO" to Biogas and DevCo.

Shelly Cohen
Concerned Constituent
Milton DE



DELAWARE CENTER FOR THE
INLAND BAYS
Research. Educate. Restore.

FROM: Chris Bason, Executive Director
TO: Members of the Sussex County Council
SUBJECT: C/U 2258 Bioenergy Development Group, LLC
DATE: March 15, 2021

The Center is a non-profit organization that facilitates the Management Plan for the Inland Bays, to which Sussex County is signatory. Although this project is located outside of the Inland Bays watershed, it would provide significant water quality and climate change mitigation benefits to the Inland Bays and is consistent with their Management Plan.

The project will transport significant amounts of excess nutrients out of polluted Sussex watersheds. Both the Inland Bays and the Nanticoke River are state-designated waters of exceptional recreational and ecological significance polluted by persistently high nutrient levels. Almost all of the waters of the Inland Bays have phosphorus levels in excess of their healthy limits. In some areas, such as the Indian River, there is so much pollution that dissolved oxygen sometimes drops to zero.

In 2018, 553,000 tons of dry poultry litter was produced on Delmarva up from 343,000 tons in 1985. This equates to 22 million pounds of phosphorus produced in an area where many soils are saturated with phosphorus. An unknown but large and likely increasing amount of poultry processing facility waste is produced on Delmarva and it is often land applied for disposal. Anaerobic digestion stands to be an important part of the solution to managing both the poultry processing facility waste and poultry litter resource for healthy water quality.

The facility will generate renewable natural gas which will save the need to produce non-renewable gas and thus reduce greenhouse gas emissions. This would serve as an important contribution to climate change mitigation from our coastal County that stands to benefit the most from these actions.

While highly beneficial, this proposed facility should be closely inspected and regulated due to its increasing aggregation of nutrients in close proximity to sensitive water resources. The extent to which this is an appropriate use in my mind is influenced by how well designed and regulated the facility is. DNREC should ensure that site design and permits for controlling runoff and wastewater on the site go beyond minimum requirements by taking into account the increasing intensity and volume of precipitation associated with climate change in order to prevent acute discharges of pollution to nearby surface waters. Air permitting should also be given special consideration. Life cycle research on similar facilities has shown that unintentional methane emissions in particular can make the difference between a facility that is a net greenhouse gas sink to a net source. Furthermore, an extraordinary level of public communication about permit compliance at the facility by DNREC and the company is appropriate given the environmental sensitivity of the site and the unfortunate reality of past permit violations at other composting facilities in the state.

We ask that you both support this facility and suggest you make these requests of DNREC in order to ensure a successful and publicly-accepted project which sets an example for the beneficial use of large-scale anaerobic digestion in the region.

Cheryl Siskin
19989 Sandy Bottom Circle, Unit 703
Rehoboth Beach, DE 19971
302-650-6912 (cell)

March 15, 2020

To the Members of the Sussex County Counsel:

I write in opposition to the proposed expansion of a facility at 28338 Enviro Way (proposed facility”), just off of Alt. Route 13 in Seaford, DE. I am a property owner in Sussex County and have worked as a planner for many years. I have my master’s in urban and regional planning and Chair the Conservation Committee of the Delaware Chapter of the Sierra Club.

This proposed facility can only be considered a heavy industrial use. It is not good planning practice to allow industrial uses to be developed adjacent to residential uses. Low-income areas are particularly vulnerable to locally-unwanted land uses (often referred to as “LuLu’s”) because the residents often have little political clout or are otherwise unable to effectively advocate on their own behalf. It is up to you elected officials to protect the property and other rights of these residents.

The proposed facility would be a huge expansion of present operations. The company advocating for the facility claims that its proposed process will be better for the environment than current practices. They also claim that the volume of truck traffic to the facility will be unchanged. These claims are just not credible.

Why would a company expand a facility to have the same level of traffic? Why do they propose a facility in an area that is not zoned for industrial uses?

I did a detailed reconnaissance of the area surrounding the proposed facility. The property is adjacent to a low-income residential community and the main access road to the proposed facility is a two-lane road that provides the only access to a number of residences, businesses and neighborhoods. The proposed facility will increase the traffic on Route 13 as well as the weight of the vehicles using the two-lane road. More, the creation and trucking of massive amounts of methane gas poses heightened risks to the surrounding properties, as well as to all properties adjacent to the roads carrying the gas.

This is not the right land use for this site. I urge you to deny the conditional-use permit.

Very truly yours

/s/ Cheryl Siskin
Cheryl Siskin



SIERRA CLUB

DELAWARE CHAPTER

To: The Planning And Zoning Commission for Sussex County

From: Sierra Club Delaware Chapter

Date: February 10, 2021

There are several critical issues with the proposed BioGas facility from Bioenergy Development Company.

The first issue is with the location. They are proposing to put this biogas production facility in an area where air and water pollution is already a serious issue. It is in an environmentally sensitive area surrounded by the Gum Branch wetlands. More, it is adjacent to a low-income community and the site is not currently zoned for heavy industry. The applicants can say this is an "agricultural" use, but it really isn't. It is a heavy industrial process that involves industrial scale digestion equipment, chemicals, a large natural gas collection and storage tank, an industrial sized water filtration system, and a small scale refinery to remove contaminants from the BioGas. For this industry to function, BioEnergy Devco will require numerous permits for air and water pollution from DNREC and rely heavily trucking to receive necessary waste-streams in and to ship by-products and final materials out. This is not the right location for this kind of heavy industrial use.

The second is the scale. They are proposing to process up to 200,000 tons annually of DAF waste from the tri-state area. The current facility is handling about 30,000+/- tons annually of poultry litter today. Given the likely increase in traffic and activity on the sight, we have concerns around how the stormwater and wastewater will be handled. For example, the posteriorly sighted stormwater lagoon on the facility will be expanded to handle additional load of removing the two front lagoons. So, how will the nearby natural environment, including the Gum Branch wetlands, be protected from the pollutants associated with the anaerobic digestion process and truck traffic that end up on the ground and roadways and ultimately in the lagoons, particularly in the case of a flood event or heavy rain?

The third is the fact that the proposal will exponentially increase the end-stage solid-waste product. The company that previously operated on this site was fined for their compost nutrients being in excess of permitted allowances. Given that the waste stream coming into the facility will be about 8 times more than the current load, how will BioEnergy address the need to insure that the waste is always compliant?

Fourth, that this proposal will not offset fracked gas. It will, in all likelihood, simply go to meet the extra demand being created by Chesapeake Utilities expanding their natural gas infrastructure. In all likelihood, if more natural gas is available, whether it is "BioGas" or fracked gas, our natural gas dependency will be promoted. Furthermore, we have major concerns with the fact that they will be trucking this gas out of the facility to hook into the natural gas grid. This means these natural gas trucks will be traveling in and around nearby residential areas. There are



SIERRA CLUB DELAWARE CHAPTER

several risks associated with heavy truck traffic, and those risks are made more severe when transporting hazardous and explosive materials.

Fifth, this proposal will generate a significant amount of new truck traffic throughout the highways and roads in the state. This will generate increased air and noise pollution. Yet, we do not see anything in the plans on how that pollution and infrastructure wear will be mitigated or controlled.

Due to these, and several other issues, the Delaware Chapter of the Sierra Club, as reflected by the signatures below by the chairs of the Executive Committee and of the Conservation Committee, opposes the proposal. We believe an alternative proposal should be submitted that addresses the waste streams and nitrate issues we already have in Delaware, before any new or expanded proposals are considered to bring in additional waste from out-of-state.

Dustyn Thompson

Volunteer and Community Outreach Coordinator

Claire Simmers

Executive Committee Chair

Jamie Whitehouse

From: E Lee <eulmlee@gmail.com>
Sent: Monday, March 15, 2021 4:21 PM
To: Michael H. Vincent; Cynthia Green; Mark Schaeffer; Doug Hudson; John Rieley
Cc: Jamie Whitehouse; Planning and Zoning
Subject: Biogas (CU 2258) Questions - Economic Benefits vs. Future Burdens

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good afternoon,

My questions regarding economic benefits to Delawareans:

- Will they use local trucking businesses and construction companies to help people living in Delaware?
- Does Bioenergy have any plans to train the locals to hire for high paying jobs, or they will bring high-tech employees from elsewhere? Or, the locals fill the jobs that pay low wages?
- How much does the County expect to gain, as tax, etc., from this operation?
- Is Bioenergy receiving any subsidies from the State?

My real question is: **Are there any hazardous liability or future burdens that the County and the State may have to take in the long run?**

If they bring the chicken waste from all over Delmarva, and possibly from North Carolina (based on a recent article), to process them in Sussex County, even after extracting the methane gas, compost and pellets, there are still large quantity of wastes to be disposed of in Sussex County. Isn't this a huge burden for Sussex County? How do we ensure the bays and groundwater will not be adversely affected by this huge operation?

(Sussex County keeps expanding the wastewater treatment facilities to accommodate its fast growth. Recently, Pelican Points residents (in Millsboro) were complaining on Nextdoor about the sewage smell coming from Inland Bays facility. We need to leave plenty of room for emergency and unexpected situations. Please do not fill those facilities to capacity.)

I can understand the argument that AD benefits the chicken industry a great deal by taking care of its headache. However, I am not sure taking in other areas' waste here and taking care of their headache is the responsible thing to do for the local residents and our children.

If the AD is so beneficial and Dogfish Head Brewery is utilizing it, why not disperse the operation in smaller scale so that the local wastes are taken care of locally. This will reduce the long distance truck/trailer traffic and potential large-scale hazards on a concentrated area.

Thank you for your time.

Eul Lee (Lewes)

From: Shelly Cohen <noreply@forms.email>

Sent: Monday, March 15, 2021 4:21 PM

To: Doug Hudson

Subject: Contact Form: DevCo Biogas

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Name: Shelly Cohen

Email: philliegyrl1968@gmail.com

Phone: 664-2929

Subject: DevCo Biogas

Message: Dear County Council

I'm writing today to oppose the application for the Conditional Use No. 2258 filed on behalf of Bioenergy Development Group, LLC

During the P & Z hearing there were less than 10 letters for this DevCo Biogas operation. Not surprisingly, all were either conglomerates from out of state or DE State Senators, Representatives or local political influencers.

The letters against the project were about 140. Your packet shows an increased number. The number of pages representing those letters is 368. All well thought out and some were scientific and technical. The DevCo attorney dismissed the validity of these letters.

The Planning and Zoning Commission should have declined this application for the following reasons:

1- Applications were incomplete. The actual ownership of this business is not clear so responsibility and/or complete evaluation of risk are not reflected in the documents.

The description of the actual business operation/activities were misrepresented to Sussex County P & Z, Deldot and other agencies on those official submitted documents.

The description of the main materials were described as Chicken Litter while the actual main ingredient is DAF. The "Sell" or "Pitch" was DevCo BioEnergy would solve the County's huge problem of disposal of massive tonnage of Chicken Manure/Litter during a conversion process Renewable Biogas - Methane.

Of course this appeals to local and neighboring Industrial Chicken Growers/Farmers. However this is not true. In the hearing, the DevCo attorney and executives admitted that Chicken Litter Will Not Be Used! It will not help the farmers.

It does help the Chicken Integrators. The massive multi Billion dollar entities that slaughter and process chickens. The integrators have the ongoing problem of DAF (Dissolved Air Flotation), a substance collected from the chicken processing wastewater containing fats, blood, chicken parts & unnamed polymers and other chemicals. This DAF problem could be solved by these Integrators by upgrading their wastewater treatment systems, a business expense they do not want to incur.

The benefit is to the Integrators not the Chicken farmers. Megatons of chicken manure will remain all over Sussex County.

2- The company's marketing arm claimed thousands of jobs will be created by this Biogas operation. Sussex needs jobs, but this industry will Not be employing large numbers of people from the county.

Instead it will be a small number of jobs, possibly 30 to 50. DevCo will need to bring in the highly trained and educated personnel from other states or country's. Those remaining unskilled labor will be on the very low range of the pay scale and probably with the most exposure to hazards and pathogens.

4- What about the Environmental damage and cost?

County is already burdened with highly polluted waters. This operation is located in the already challenged Nanticoke watershed and a short distance from the town of Blades. You may remember the town was found to have it's water supply contaminated. You may remember that in 2018 Blades residents were told to stop drinking municipal water after elevated levels of toxic per- and poly-fluoroalkyl substances (PFAS)—specifically PFOS and PFOA—were found in public and private wells there. A problem that will live in perpetuity. No one knows the ongoing implications to health and environment.

The County has the obligation to ask questions about the impact of the air emissions, pollution discharge into any water system, natural or municipal and land application of the Biogas processing waste.

This risk evaluation has not been made; Documents are incomplete; Essential questions were not asked; Adequate financial responsibilities in the form of multi-million dollar Bonds and/or insurance coverage verifications were not obtained.

At the hearing, the company acknowledged dependence on the existing wells, septic and waste lagoon. So, what happens to the waste & wastewater? How does the escaping gas affect the air quality for the people who live in this unincorporated area of Seaford?

A desire to have sewage lines installed was expressed. That is a huge cost and it is a long way to the municipal system in Seaford. No one commented on the Seaford Sewage system's capability to process industrial waste with municipal waste. Most municipal systems cannot do this by design and Federal law.

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