

**Hoosier Environmental Council**

**Gary Office**  
541 S. Lake Street  
Gary, IN 46403  
219/464-0104  
Fax: 219/464-0115



3951 N. Meridian, Ste. 100, Indianapolis, IN 46208  
P 317.685.8800 F 317.688.4794

WWW.HECWEB.ORG

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**Via Email:**

Joseph Williams at [jwilliams@idem.in.gov](mailto:jwilliams@idem.in.gov)  
Mitchell Halcomb at [mhalcomb@idem.in.gov](mailto:mhalcomb@idem.in.gov)  
Doug Wolf at [dwolf@idem.in.gov](mailto:dwolf@idem.in.gov)  
Marty Maupin at [mmaupin@idem.in.gov](mailto:mmaupin@idem.in.gov)

**RE: Application for CFO Approval of Natural Prairie Dairy Indiana, LLC  
IDEM CFO ID# 6980**

Dear Sirs:

I am writing on behalf of the Hoosier Environmental Council’s (HEC) and Protect Our Kankakee River Basin (PKRB). HEC and PKRB collectively represent more than 10,000 supporters statewide including hundreds of Newton County residents who are deeply concerned about Natural Prairie Dairy’s (NPD’s) plans to build a CAFO with 4,350 dairy cows in one of the most sensitive environmental areas in Indiana—the former Beaver lakebed in the Kankakee River basin.

NPD’s 278-page application for CFO Approval submitted to IDEM on October 10, 2018 (“the Application”) is starkly at odds with NPD’s repeated claims to the public (including to local zoning officials) about its plans to operate an “organic” dairy that will use “innovative” manure processing technology—claims made in an effort to allay residents’ concerns that the CAFO will threaten surface and groundwater in the area. The Application also fails to meet Indiana’s requirements for CFO Approval, requires additional Rule 5 and wetland review, and should be denied by IDEM for the following reasons:

**I. NPD’s Public Claims that the CAFO Will be “Organic” and Will Use “Innovative” Manure Processing Technology Must be Considered and Reviewed by IDEM as Part of the Application for CFO Approval**

*A. NPD Claim: “We Will Use ‘Innovative’ Manure Treatment Technology”*

NPD’s owners have made repeated claims over the last two years that NPD would use some sort of “innovative” or “revolutionary” manure treatment technology that will “convert cow manure into clean water” thereby eliminating the concern for nutrient and pathogen

contamination of nearby surface waters and drinking water wells.<sup>1</sup> Indeed, back in March of 2017, NPD represented to the Newton County Board of Zoning Appeals (BZA)—after initially being denied a special exception—that it would not need to land apply raw manure because “95-97% of the manure” would be contained and processed using “Trident Technology” to recover nutrients, leaving “low nutrient water” that will be stored in the lagoon and sprayed on fields.<sup>2</sup> While the use of “Trident Technology” was not even mentioned in NPD’s first IDEM application for CFO Approval or in the Approval itself, NPD’s misleading claim caused at least one opposing BZA member to change his vote to favor the proposal.<sup>3</sup>

Then, in response to community opposition, NPD claimed that it had “voluntarily withdrawn [its] approved IDEM permit to take additional time to listen to all concerns” and would be “investing in revolutionary technology that will turn cow manure into clean water, possibly negating the need for a lagoon and greatly reducing any odor.”<sup>4</sup> Going further, NPD’s owners claimed they “wanted to go above and beyond what the law requires” by using “this revolutionary green technology”—known as the “Omniprocessor”—which would be “a game changer” for “our neighbors, for our farm, and for the environment.”<sup>5</sup> Now, having submitted a second application for CFO Approval to IDEM, NPD claims it will be using the “Janicki Bioenergy advanced vapor recompression unit” (the Janicki system) to “separate solid and liquid fractions of dairy manure to produce clean water, dried solids and a concentrated aqueous ammonia fertilizer solution.”<sup>6</sup>

Based on review of the second application to IDEM, it appears that NPD’s public assurances are again misleading, if not entirely false. Contrary to NPD’s public declaration that “the technology indeed works (ask Bill Gates),” the Janicki system is actually in the early “proof

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<sup>1</sup> See e.g., *Newton County Group Opposed to Large-Scale Organic Dairy Plan Starts Petition Drive*, Northwest Indiana Times (Oct. 19, 2018) (quoting NPD’s owner Will DeJong: “[W]e are thrilled to deploy the revolutionary advanced VRD (vapor recompression distillation) at our family organic dairy. This green technology will convert the cow manure into clean water and organic fertilizer — we think this will change animal agriculture for the better, forever.”)

<sup>2</sup> This representation was made by NPD’s owner Will DeJong at the second public hearing before the Newton County BZA on March 28, 2017. See Audio Recording of BZA Hearing at ~22:00-28:00 and ~51:00.

<sup>3</sup> Audio Recording of BZA hearing (March 28, 2017) at ~1:10 (quoting BZA member, Tom Bober: “I feel better about it [the Special Exception] tonight with the explanation of your manure processing because I was under the impression last time that it was going to be all raw manure [applied to land]. This makes more sense.”)

<sup>4</sup> See *DeJong Organic Dairy Farm to Turn Cow Manure into Clean Water*, Newton County Enterprise (June 1, 2018) (quoting Donald and Cheri DeJong).

<sup>5</sup> *Id.*

<sup>6</sup> See *Controversial Large-Scale Dairy Proposal Back on the Table in Newton County*, Northwest Indiana Times (Oct. 14, 2018) (quoting Will DeJong).

of concept” stage,<sup>7</sup> and has not been proven effective for use at a CAFO of the size and scale NPD is proposing. Indeed, NPD admits as much, claiming it plans to first “install and test the technology at its facility in Texas *before* using it in Newton County.”<sup>8</sup> Also notable, IDEM confirmed at the recent public meeting on November 13<sup>th</sup> that the agency would not be reviewing or even considering the Janicki system as part of the proposed CAFO in deciding whether to grant CFO Approval.<sup>9</sup> Thus, there is simply no basis for NPD to publicly state otherwise. Yet that is exactly what NPD has done.

In front page local news, NPD’s owner announced that the new “permit application contains detailed engineering plans, including the use of a revolutionary green technology called the Advanced VRD (Vapor Recompression Distillation) that will convert the cow manure into clean water and organic fertilizer.”<sup>10</sup> And, attempting to legitimize this claim, NPD’s owner made this announcement in a photo-op with the Program Director of “The Nature Conservancy, neighbors of the organic dairy,” who claimed to be “impressed” having “reviewed the permit and the DeJongs’ innovative approach to manure management.”<sup>11</sup>

Given NPD’s repeated insistence that it will definitively use the Janicki system at the proposed CAFO, that technology must be reviewed by IDEM as part of NPD’s Application for CFO Approval. Specifically, the technology meets the CFO Rule definition of a “waste management system”—327 IAC 19-2-48—and, therefore, must be regulated as such in accordance with 327 IAC 19-5-1(a)(2), 327 IAC 19-7-1(c)(4), 327 IAC 19-7-2(b)(1), 327 IAC 19-7-4, 327 IAC 19-7-5(b)(1) and 327 IAC 19-12. Also, depending on its design, the proposed Janicki system may require a NPDES permit—*see* 327 IAC 19-2-48(3)(C)—and/or an air permit.

If NPD is not ready to move forward the Janicki system at this time, IDEM should deny its application for CFO Approval until it is. And, if and when NPD is ready to use the Janicki system, IDEM should also require NPD to address whether the Janicki system will in any way limit the pasture runoff and groundwater contamination concerns from 4,000+ cattle defecating in pasture areas for at least 120 days per year. In that regard, NPD has repeatedly insisted that its CAFO will be a certified organic dairy (see discussion below), but has not provided any information on which to determine: (a) the quantity of contaminated stormwater that will be generated by the cow transfer paths and pasture areas; (b) the amount of manure generated by the herd while on pasture for at least 120 days; and (c) whether *any* of that contaminated stormwater and raw manure will be treated in the Janicki system. In addition, any claim that NPD is

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<sup>7</sup><https://www.janickibioenergy.com/wp-content/uploads/2017/02/VRD-One-Pager-PDF-20170125.pdf>

<sup>8</sup> See *Controversial Large-Scale Dairy Proposal Back on the Table in Newton County*, Northwest Indiana Times (Oct. 14, 2018).

<sup>9</sup> See *IDEM Reps Explain Their Authorities in Natural Prairie Dairy’s Permit*, Newton County Enterprise (Nov. 15, 2018).

<sup>10</sup> See *DeJong Organic Dairy Re-Files IDEM Permit with New Technology*, Newton County Enterprise (Oct. 10, 2018).

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

successfully using the Janicki system in Texas, must be critically evaluated because of the unique ecological concerns involved at the Newton County site—concerns which are not likely present at any site in Texas. For example, Texas does not have the same stormwater runoff or parlor wastewater treatment concerns because the evaporation rate is much higher, and the precipitation rate much lower in Texas than in Indiana generally, or northwest Indiana in particular.

In sum, IDEM must hold NPD to its publicly stated claim that its CAFO will use the Janicki system by incorporating and reviewing that claim now, as part of the NPD’s application for CFO Approval and denying the application if the technology is not proven and available for use at this time. Failure to do so will make IDEM complicit in NPD’s effort to mislead the public and present its CAFO as something other than what it is asking IDEM to permit—effectively “greenwashing” its proposal with IDEM’s stamp of approval.

*B. NPD Claim: “The Operation Will Be a ‘Certified Organic’ Dairy”*

NPD also claims that its CAFO will be a “certified organic” dairy.<sup>12</sup> That means, NPD’s 4,000+ cows must be allowed to graze in pasture, “during the entire grazing season for the geographical region, which shall not be less than 120 days per calendar year.” See 7 CFR § 205.237(c)(1). Nevertheless, there is not even a hint in NPD’s new application to IDEM that even remotely suggests that the CAFO will have the required pasture areas for grazing cattle in violation of federal organic standards, much less provide necessary information about those pasture areas as is required by Indiana’s CFO Rule.

Specifically, the federally required pasture areas associated with NPD’s proposed CAFO are CFO “production areas” as defined by 327 IAC 19-2-34 to include “open lots,” “feedlots,” “cow yards” and “animal walkways.” And, depending on the percentage of vegetation versus animal walkways, these pasture / production areas may also be part of the CAFO’s “waste management systems”—see 327 IAC 19-2-48 (defining the term to include a “feedlot”)—and therefore subject to the site restrictions set forth in 327 IAC 19-12-2, the setback requirements of 327 IAC 19-12-3 and design standards of 327 IAC 19-12-4. Even so, NPD’s permit application does not provide *any* information about these pasture / production areas as required by 327 IAC 19-7-2(b)(3), 327 IAC 19-7-3(a)(5) or address any of the following related concerns:

- Will the manure application areas identified by NPD in its application also be used as pasture/production areas for the grazing cattle? If so, do the calculations for determining sufficient manure application acreage as required 327 IAC 19-14-2 account for the raw manure that will be added when the cows are grazing on those pasture/production areas?
- DNR’s flood plain maps indicate that at least one of the manure application areas is in or near a flood plain. And, NRCS soil survey data (and the soil testing conducted by NPD)

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<sup>12</sup> See *Legal Challenge Has Been Filed Against Planned Organic Dairy*, [Newton County Enterprise](#) (June 15, 2018); *DeJong Organic Dairy Re-Files IDEM Permit with New Technology*, [Newton County Enterprise](#) (Oct. 10, 2018).

indicate that the CAFO site and surrounding areas have hydric soils, a seasonally high water table, and are prone to frequent ponding. Also, photos taken after recent rain events definitively show that the area is prone to flooding,<sup>13</sup> and there are surface waters within the designated land application areas. Given these conditions, how will NPD comply with the manure application rates, restrictions and setbacks in 327 IAC 19-14-3, 327 IAC 19-14-4 and 327 IAC 19-14-6 when the manure application areas are being used as pasture/production areas? Specifically:

- How will NPD ensure that the cows will be evenly spread out to ensure application at agronomic rates?
- How will NPD ensure that 50% vegetation is maintained to avoid feedlot designation of those pasture / production areas?
- How will NPD keep cows away from surface waters including wetlands?
- What sort of stormwater controls will be implemented for cow walkways?

These issues must be addressed in any final CFO Approval or the unpermitted pasture / production areas will allow unpermitted discharges and “manure releases” as defined by 327 IAC 19-2-27 in violation of the CFO Rule and the federal Clean Water Act.

## **II. A New Rule 5 Review is Required Given NPD’s Significantly Changed Plans**

NPD should be required to submit new Rule 5 plans in accordance with 327 IAC 15-5-6.5 for IDEM’s review and approval. Even a cursory review of NPD’s new application for CFO Approval reveals that NPD is proposing to construct a CAFO with buildings and waste management systems and structures that are substantially different in number, type, design and location from those initially approved by IDEM.

Indeed, the initial plan was to build three confinement buildings, a milking parlor, holding pen, and “reception pit” on the parcel at 400 N and 400 W, with a synthetically-lined manure lagoon and mortality site to be constructed on adjacent property at 400 N and 600 W.<sup>14</sup> In contrast, the current NPD application proposes three confinement barns with cooling water pits and associated ramps and trenches, a calf barn and associated transfer pit, ramp and trench, a hospital (special needs) barn, a milking parlor and holding pen with a pit and associated ramp, the “McLanahan” building for sand/manure separation and pits for liquid/solids and associated ramp, a “Janicki” building for liquids/solids processing and separation, a concrete storage pad<sup>15</sup>

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<sup>13</sup> Several such photos were taken in February of this year by HEC Staff Attorney Sam Henderson and are provided with these comments for IDEM’s consideration.

<sup>14</sup> See NPD’s CFO Approval of Oct. 11, 2017.

<sup>15</sup> Notably, there are no calculations provided in the pond size calculations or flow diagram to demonstrate that the concrete pad is of adequate size and proper design to store the fiber, sand and nutrient sludge.

and pit for manure fiber, nutrient material and sand, a feed center building, a synthetically lined, two-cell manure storage pond, twelve aqueous ammonia storage tanks, a mortality pick-up site, a bagged feed storage pad, and two stormwater/sediment control ponds all on the property at 400 N and 400 W.<sup>16</sup> And, the federally required pasture / production areas associated with the CAFO will no doubt have constructed cow pathways that must have stormwater/erosion controls as well.

Given these significant differences, any site-specific construction and post-construction plans that NPD previously submitted for stormwater and erosion control under 327 IAC 15-5-6.5 cannot possibly meet Rule 5's requirements for the dramatically different CAFO now proposed. This is of particular concern given the site's topography, numerous surface ditches, and subsurface tiles that direct storm water runoff to adjacent natural areas containing wetlands.

### **III. A More Thorough Wetland Investigation is Needed**

NPD's Application includes a wetland report dated July 16, 2018 prepared by Cardno.<sup>17</sup> The report confirms the presence of "historically hydric soils" and the fact that the National Wetland Inventory map shows a "Palustrine Emergent Persistent and Temporary Flooded (PEM1A) wetland" and "an extensive ditch system" at the site. Based on a site inspection, however, Cardno concludes that the ditches have been filled.<sup>18</sup> And, based on "two upland data points" and photographs taken in June of 2018 (the dry season), Cardno determined that those specific areas "did not exhibit wetland characteristics."

While Cardno's "professional opinion that the two upland areas surveyed contained no wetland resources," that opinion does not rule out the possibility that there are wetlands and/or farmed wetlands in other areas of the site. Indeed the likelihood that wetlands and/or farmed wetlands exist is easily seen by considering the National Wetlands Inventory map which definitively shows the site to be surrounded by extensive wetland areas on its southern and southwestern borders. That, combined with the existence of hydric soils and demonstrated history of ponding and flooding, we urge IDEM to require a more thorough wetland investigation than that conducted by NPD.

### **IV. NPD's Disclosure Statement Requires Further Scrutiny**

Ind. Code § 13-18-10-1.4 provides in relevant part that in applying for a CFO Approval, "each responsible party" must provide a "disclosure statement" if "State or federal officials at any time alleged that the responsible party committed acts or omissions that constituted a material violation of state or federal environmental law" and those "acts or omissions . . . presented a substantial endangerment to human health or the environment." A "responsible party" includes the applicant seeking CFO Approval, the officers, directors and senior

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<sup>16</sup> See NPD's 2<sup>nd</sup> CFO Application of Oct. 10, 2018.

<sup>17</sup> NPD 2<sup>nd</sup> Application at 226.

<sup>18</sup> Notably, there is no explanation as to whether 401 Water Quality Certification or other permits were needed and obtained to fill these ditches.

management officials of the applicant if the applicant is a corporation, a partnership, a limited liability company, or a business association, and each “owner/operator” of the CFO including persons that own the CFO’s waste management systems, the livestock, or is otherwise in control of the CFO or its land application activities. *See* Ind. Code § 13-11-2-191 and 327 IAC 19-2-32. As directed in IDEM’s CFO Application form, all responsible parties must be disclosed regardless of whether a disclosure statement for a particular responsible party is ultimately required so that IDEM can conduct the necessary “inquiry or investigation, consistent with [IDEM’s] duties” in determining whether to issue a CFO Approval. Ind. Code § 13-18-10-2.1(a)(2). And, failing to disclose all responsible parties is a basis on which IDEM may deny an application for CFO Approval under Ind. Code § 13-18-10-2.1(e). Here, it appears that NPD may not have complied with these requirements.

NPD’s disclosure statement identifies the following responsible parties: (1) the applicant, Natural Prairie Indiana Farmland Holdings, LLC; (2) its “sole member,” Texas based Natural Prairie Dairy Farms, LLC; (3) Donald De Jong and Cheri De Jong as officers of Natural Prairie Dairy Farms, LLC; and (4) Will De Jong as a “contact” for the applicant. NPD’s disclosure statement also states that Donald and Cheri De Jong and Natural Prairie Dairy Farms, LLC own or operate certain CAFOs in Texas including Jersey Gold Dairy, Northside Dairy, Natural Prairie Dairy Farms, Natural Prairie Dairy Farms Heifer, and Natural Prairie Dairy Farms Barns 4 & 5. Finally, NPD states that none of the disclosed responsible parties have committed acts or omissions that constitute a material violation of state or federal environmental law.<sup>19</sup> All of these sworn statements should be investigated further.

Based on a simple google search, it is evident that Donald and Cheri De Jong own and operate more CAFOs and CAFO related businesses than disclosed by NPD. Indeed, Donald De Jong is CEO of AgriVision Farm Management, LLC and Cheri De Jong serves as the company’s CFO.<sup>20</sup> AgriVision in turn owns companies including CAFOs that were not disclosed by NPD.<sup>21</sup> In addition, a recent news article in the Waco Tribune discusses a federal Clean Water Act lawsuit brought against “dairyman Willy De Jong” by the City of Waco for discharging manure at his “2,500-cow Hidden View Dairy” into the North Bosque River.<sup>22</sup> Presumably “Willy DeJong” is one the family members involved in AgriVision as mentioned in a 2016 industry journal article about the De Jongs in the Progressive Dairyman.<sup>23</sup>

These discrepancies require a hard look by IDEM. An out-of-state company should not be allowed to form a shell company in Indiana to hide its regulatory background especially when

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<sup>19</sup> NPD 2<sup>nd</sup> Application at 42-45.

<sup>20</sup> <https://agrivision.farm/about-us/>

<sup>21</sup> <https://agrivision.farm/what-we-do/>

<sup>22</sup> [https://www.wacotrib.com/news/environment/bosque-river-dairies-waco-officials-seeing-progress-trust-on-water/article\\_8e3437a7-c950-57ec-a8ff-a3ed2edefb72.html](https://www.wacotrib.com/news/environment/bosque-river-dairies-waco-officials-seeing-progress-trust-on-water/article_8e3437a7-c950-57ec-a8ff-a3ed2edefb72.html)

<sup>23</sup> <https://www.progressivedairy.com/topics/people/donald-cheri-de-jong-build-multi-discipline-dairy-company>

that out-of-state company is proposing to build a massive CAFO in one of the most sensitive environmental areas of Indiana.

## **V. IDEM Should Deny NPD's Application to Protect Human Health and the Environment from Threats to Water Quality**

The proposed CAFO site meets the definition of a “sensitive area” under 327 IAC 19-2-39 in several respects. As discussed fully in the attached reports of Martin Risch, a hydrologist formerly with USGS (and IDEM),<sup>24</sup> the site is in a former lakebed, overlays an unconfined aquifer used as a source of drinking water, is surrounded by protected wetlands, drains to ditches and tributaries of the Kankakee River, and is near natural areas including a nature preserve and public fish and wildlife area. In Mr. Risch’s professional opinion, allowing a CAFO of this size and scale to be built at this location will likely result in “chronic and catastrophic contamination of groundwater and surface water” thereby posing an undue and irresponsible risk to human health and the environment.

While IDEM, to our knowledge, has not denied *any* applications for CFO Approval in recent years—apparently interpreting the CFO Rule as not giving it the authority to do so—there are several provisions of the Rule that when read together give IDEM discretion to deny CFO Approval in this instance:

- The very purpose of the CFO Rule is to “protect human health and the environment from threats to water quality.” 327 IAC 19-1-1.
- IDEM can impose “additional measures” including “alternate operational requirements” that are “necessary to protect human health and the environment.” 327 IAC 19-4-1. This provision could be reasonably interpreted to require operation at an alternate location.
- The performance standards in 327 IAC 19-3-1 require, among other things, that: (1) a CFO is “constructed and operated in a manner that minimizes nonpoint source pollution;” (2) “all reasonable steps” are taken to “prevent manure releases, spills or discharges of manure;” (3) “all waste management systems” are “designed, constructed maintained . . . to prevent manure releases or spills, as well as ensure compliance with water quality standards;” and (4) manure is handled in such a way so as “not to threaten or enter waters of the state” or cause “runoff, manure releases or spills.” 327 IAC 19-3-1. Given site conditions and the nature, size and scale of NPD’s proposed CAFO, IDEM could reasonably determine that these performance standards cannot be met.
- IDEM is given express authority to deny a CFO Approval application if the proposed CFO does not meet the requirements of the CFO Rule or the confined feeding law and/or “a responsible party intentionally misrepresented or concealed any material fact in” the application for CFO Approval. Ind. Code § 13-18-10-2.1(e); 327 IAC 19-8-4.

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<sup>24</sup> [https://www.usgs.gov/staff-profiles/martin-r-risch?qt-staff\\_profile\\_science\\_products=3#qt-staff\\_profile\\_science\\_products](https://www.usgs.gov/staff-profiles/martin-r-risch?qt-staff_profile_science_products=3#qt-staff_profile_science_products)

In closing, we urge IDEM to deny NPD's application for CFO Approval for the reasons discussed above and thank you for your thoughtful consideration of our concerns.

Sincerely,

A handwritten signature in black ink that reads "Kim Ferraro". The signature is written in a cursive, flowing style.

Kim Ferraro  
Senior Staff Attorney

cc:

Newton County Health Department  
Newton County Commissioners  
Lake Township Trustee, Nikki Hanger  
Indiana Department of Natural Resources  
Senator Rick Niemeyer