MINNESOTA POLLUTION CONTROL AGENCY

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August 15, 2019

TO: INTERESTED PARTIES

RE: BIL 8 Feedlot

The Minnesota Pollution Control Agency (MPCA) has approved the Findings of Fact, Conclusions of Law, and Order for a Negative Declaration on the need for an Environmental Impact Statement on the BIL 8 Feedlot. The Findings of Fact, Conclusions of Law, and Order document concludes that this project does not have the potential for significant environmental effects. The decision for a Negative Declaration completes the state environmental review process under the revised Environmental Quality Board rules, Minn. R. ch. 4410. Final governmental decisions on the granting of permits or approvals for the project may now be made.

These documents can be reviewed at the following locations: the MPCA offices in St. Paul; the Minneapolis Public Library at 300 Nicollet Mall, Minneapolis; and the Marshall-Lyon County Library at 201 C Street, Marshall. The document can be viewed on our MPCA website at www.pca.state.mn.us/eaw. Requests for copies of these documents may be made by contacting the St. Paul office at 651-757-2100.

We want to express our appreciation for comments submitted on the Environmental Assessment Worksheet. Comments and responses to them have been incorporated into the Findings of Fact, Conclusions of Law, and Order and have been considered by MPCA staff during the permit process for the proposed project.

Sincerely,

Dan R. Card, P.E.
Supervisor, Environmental Review Unit
St. Paul Office
Resource Management and Assistance Division

DRC:bt

**STATE OF MINNESOTA**
**MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF THE DECISION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED BIL 8 FEEDLOT MINNEOTA TOWNSHIP JACKSON COUNTY, MINNESOTA**

**FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER**

Pursuant to Minn. ch. 4410, the Minnesota Pollution Control Agency (MPCA) staff prepared and distributed an Environmental Assessment Worksheet (EAW) for the proposed BIL 8 feedlot. Based on the MPCA staff environmental review, the EAW, comments and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order.

## FINDINGS OF FACT

### Project Description

1. B.I.L., LLC (B.I.L.) proposes to expand an existing swine finishing feedlot in Section 31 of Minneota Township, Jackson County (Project). The existing feedlot consists of the following items:
    - One 192-foot x 101-foot total confinement, power-ventilated, 2,400 head (720 Animal Units or AU) swine finishing barn with 8-foot deep poured concrete liquid manure storage area (LMSA)
    - One 8-foot x 8-foot x 4-foot temporary animal mortality storage box
    - One water well (Unique Well ID 834242) for livestock watering

2. The Project consists of adding the following to the existing feedlot:
    - One additional 192-foot x 101-foot total confinement, power-ventilated, 2,400 head (720 AU) swine finishing barn with 8-foot deep poured concrete LMSA.
    - The Project will result in an increase in water use to withdraw 1.8 million gallons per year.

    The Project would result in the feedlot increasing from 720 AU to 1,440 AU (2,400 to 4,800 head of swine).

3. B.I.L. plans to begin and complete construction in early fall of 2019.

4. B.I.L.'s actual construction dates are dependent on completion of the environmental review process, issuance of the Minnesota Department of Natural Resources (DNR) Water Appropriation Permit and the State of Minnesota General Animal Feedlot National Pollutant Discharge Elimination System (NPDES) Permit (Feedlot Permit) from the MPCA.

5. The facility will generate approximately 1.6 million gallons of manure annually after completion of the Project.

6. B.I.L. controls the land on any of the manure application sites to be used for the Project.

7. B.I.L. will use a licensed Commercial Animal Waste Technician (CAWT) who will transfer the manure from B.I.L.'s two barns to the manure application sites. The CAWT will land apply manure to cropland according to B.I.L.'s MPCA approved Manure Management Plan (MMP).

8. B.I.L. has applied for coverage under the Feedlot Permit (MNG442048) on April 5, 2019.

**Procedural History**

9. An EAW is a brief document designed to provide the basic facts necessary for the Responsible Governmental Unit (RGU) to determine whether an Environmental Impact Statement (EIS) is required for a proposed project or to initiate the scoping process for an EIS (Minn. R. 4410.0200, subp. 24). The MPCA is the RGU for this Project.

10. Minn. R. 4410.4300, subp. 29(A) requires preparation of an EAW for the Project because it is the construction of an animal feedlot facility with a capacity of 1,000 AUs or more. Because B.I.L. constructed the existing facility on the same site less than 3 years ago, and the combined AU capacity for each phase of the Project exceeds the mandatory EAW threshold category for animal feedlots, the MPCA considers the Project (including both phases) to be a phased action per Minn. R. 4410.0200, subp. 60. Therefore, the MPCA conducted an environmental review of this Project, which included the existing facility.

11. The MPCA provided public notice of the Project as follows:
    a. The Environmental Quality Board (EQB) published the notice of availability of the EAW for public comment in the *EQB Monitor* on June 10, 2019, as required by Minn. R. 4410.1500.
    b. The EAW was available for review on the MPCA website at: www.pca.state.mn.us/eaw.
    c. The MPCA provided a news release to media in southern Minnesota, and other interested parties, on June 13, 2019.
    d. B.I.L.'s application for permit coverage under the Feedlot Permit was open for public comment from June 10, 2019, through July 10, 2019.

12. During the 30-day comment period ending on July 10, 2019, on the EAW, the MPCA received comments from the Minnesota State Historic Preservation Office, the Southwest Regional Development Commission, the Minnesota Department of Natural Resources, Minnesota Department of Transportation, and one comment from citizens.

13. The list of comment letters received during the 30-day public comment period are included as Appendix A to these Findings.

14. The MPCA prepared written responses to the comments received during the 30-day public comment period. These responses are included as Appendix B to these Findings.

**Criteria for Determining the Potential for Significant Environmental Effects**

15. The MPCA shall base its decision on the need for an EIS on the information gathered during the EAW process and the comments received on the EAW (Minn. R. 4410.1700, subp. 3). The MPCA must order an EIS for projects that have the potential for significant environmental effects (Minn. R. 4410.1700, subp. 1). In deciding whether a project has the potential for significant environmental effects, the MPCA must compare the impacts that may be reasonably expected to occur from the Project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:

    A. Type, extent, and reversibility of environmental effects.

    B. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the Project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the Project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of B.I.L. to minimize the contributions from the project.

    C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.

    D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or B.I.L., including other EISs.

**The MPCA Findings with Respect to Each of These Criteria Are Set Forth Below**

**Type, Extent, and Reversibility of Environmental Effects**

16. The first criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the "type, extent, and reversibility of environmental effects" Minn. R. 4410.1700, subp. 7. A. The MPCA Findings with respect to this criterion are set forth below.

17. The types of impacts that are reasonably expected to occur from the Project include the following:
    - Surface water and groundwater quality
    - Groundwater appropriation
    - Air quality - related to hydrogen sulfide, ammonia, and odor emissions

18. Written comments received during the comment period raised additional issues, as follows:
    - *E. coli* contamination in the Little Sioux River

19. With respect to the extent and reversibility of impacts that are reasonably expected to occur from the Project, the MPCA makes the following Findings.

Surface Water and Groundwater Quality

20. The EAW outlines construction and operational best management practices (BMPs) B.I.L. will use to comply with the discharge standards of Minn. R. pt. 7020.2003 and the Feedlot Permit, Section 10. This includes the requirement to manage the operation of the facility to contain all contaminated runoff and the direct precipitation up to the volume from a 25-year 24-hour storm event.

21. Minn. R. 7020.2015 and the Feedlot Permit, Section 10, require that all animals at the feedlot have no direct access to surface waters.

22. Storage of liquid manure is required to be in a structure that meets the design criteria of Minn. R. 7020.2100. Additionally, a professional engineer licensed in the state of Minnesota is required to design and oversee construction of liquid manure storage structures.

23. As required by Minn. R. 7020.2100 a perimeter drain tile will be installed around the liquid manure storage area in order to protect the liner of the structure from impacts due to water table fluctuation. The perimeter tile system is required to have access for visual observation to ensure the storage system is functioning properly.

24. Minn. R. 7020.2225 and section 4 of the Feedlot Permit, require that the Permittee manage all manure in accordance with its MPCA-approved MMP. The MMP describes how manure generated at the feedlot is land applied in a way that maximizes the benefits to cropland, meets all rules and regulations, and protects surface water and groundwater quality.

25. Minnesota's "Final Animal Agriculture Generic Environmental Impact Statement" (2002) and the University of Minnesota Agriculture Extension Program state that manure not only supplies nutrients, but can also improve the biological and physical properties of soil, making it more productive and less erosive. Manure provides valuable organic matter to soil that improves soil tilth, aids in the retention of water and nutrients, and promotes growth of beneficial microorganisms. Manure, when properly used as part of a soil management program, improves soil quality, builds soil structure, and increases the level of soil organic matter. Commercial fertilizers cannot provide these same improvements to soil properties.

26. All intensively farmed cropland in Minnesota receives applications of nutrients to promote crop growth. The addition of nutrients from any source to the environment creates a potential for environmental impacts when that application is not performed responsibly. The MMP for the project requires that nutrients from manure be applied in accordance with the Feedlot Permit and Minn. R. 7020.2225.

27. In order to minimize the potential for nitrate leaching into the groundwater at the manure application sites, manure will be applied at nitrogen based agronomic rates for the type of crop grown. Nitrogen contributions from all sources, including commercial fertilizers, must be accounted for when determining the application rate of manure. The total of nitrogen from all sources cannot exceed the agronomic needs of the crop.

28. In order to minimize impacts from surface runoff at the manure application sites, all manure application is required to observe setbacks to waters, open tile intakes, sinkholes, mines, quarries, and wells as required in Minn. R. 7020.2225 and the Feedlot Permit. Where a county also has setback requirements, application of manure must follow the most restrictive of the state or county setback requirements.

29. The Feedlot Permit requires transport of manure in a manner to prevent it from leaking or spilling on to public roadways. If manure leakage or spillage does occur, it must be cleaned up and land applied in accordance with Minn. R. 7020.2010 and the Feedlot Permit.

30. B.I.L. has identified 482 acres of cropland available for manure application. Based upon the approved MMP, this is adequate for land application of the manure at agronomic rates.

31. The MMP for the project indicates all manure applications to fields that are under the control of B.I.L. will be injected using a knife injection system, which further limits potential impacts due to runoff from the land application sites. This also limits the potential for bacterial transport from the manure application sites to waters.

32. When a CAWT is hired to spread the manure, they must keep records of the quantity and nutrient content of the manure delivered as well as the location and rate of application.

33. B.I.L. must keep records of manure application activities for the six most recent years. The records must include the amount and nutrient content of manure, location where the manure is applied, and the rate of application.

34. The MPCA finds that, when manure is applied in accordance with the MMP required by the Feedlot Permit, the amount of nutrients in stormwater runoff from the fields used for manure application will be similar to the existing conditions resulting from nutrient application via commercial fertilizer.

35. The MPCA finds that the measures specified above will prevent or mitigate potential water quality impacts.

36. Although the MPCA does not reasonably expect significant adverse impacts to water quality, if these were to occur, B.I.L. must modify the operation and management of the Project. If land application practices under the MPCA-approved MMP are found to cause pollution of waters, the MPCA may require revisions to the MMP to address any causative factors that led to the pollution in accordance with Minn. R. 7020.2225. A revised MMP, once approved by the MPCA, is an enforceable part of the Feedlot Permit.

37. Although the MPCA does not expect significant adverse impacts to water quality, if these were to occur, B.I.L. must modify the operation and management of the Project. The MPCA would then modify the Feedlot Permit and the MMP, and impacts to waters would be reversed.

38. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to the quality of surface water and groundwater that are reasonably expected to occur from the Project.

39. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent and reversibility of impacts related to surface water and groundwater quality, which are reasonably expected to occur.

Groundwater Appropriation

40. There is currently one water well at the Project site (Unique Well ID 834242). The well is used for watering swine at the existing feedlot. The well is registered with the Minnesota Department of Health (MDH).

41. The current feedlot at the Project site uses less than 1 million gallons of water per year and, therefore, a DNR Water Appropriations Permit has not been required for the well in the past.

42. The Project would result in the feedlot's water use increasing to 1.8 million gallons per year, which is a total consumption of 44.2 million gallons over 25 years.

43. This level of water use will require B.I.L. to obtain a DNR Water Appropriation Permit for the Project because it is over the DNR's permitting threshold of 1 million gallons per year.

44. The DNR is the permitting authority for appropriating waters of the state in Minnesota. The DNR Water Appropriations Permit allows for a reasonable use of water if the use does not negatively impact surrounding wells or other water resources.

45. The purpose of the Water Appropriation Permit is to ensure water resources are managed so that adequate supply is available for long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power, and navigational uses, and water quality to support those uses.

46. The DNR Water Appropriation Permit balances competing management objectives, including both the development and protection of water resources. Minn. Stat. § 103G.261 establishes domestic water use as the highest priority of the State's water when supplies are limited. If a well interference arises, the DNR has a standard procedure for investigating the matter. If the DNR finds a commercial operator is causing interference, the operator must correct it.

47. Unauthorized pumping or use of the well or other water resources is subject to enforcement under Minn. Stat. § 103. Upon completion of an investigation, a permit for water appropriation may be limited, amended, or denied in accordance with applicable laws and rules for the protection of the public interests and the sustainability of Minnesota's water resources.

48. Due to the DNR oversight and permitting of water appropriations, the MPCA does not expect significant adverse impacts to water appropriation. However, if the DNR determines there is well interference based on concerns or well interference claims, the operator must fix the causes of the interference. Thus, the impacts to water appropriations would then be reversed. The MPCA finds that any water appropriation impacts that may occur from the Project are reversible.

49. The MPCA finds that the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts related to water appropriations that are reasonably expected to occur.

Air Quality

50. B.I.L. conducted air dispersion modeling in March 2019 to estimate the atmospheric concentrations of hydrogen sulfide, ammonia, and the intensity of odorous gases at the Project property lines and nearest neighbors.

51. B.I.L.'s air modeling used the American Meteorological Society Regulatory Model (AERMOD) developed by the American Meteorological Society and the U.S. Environmental Protection Agency. The model evaluated the air quality impacts of the Project. AERMOD is a widely accepted air dispersion model, which uses conservative assumptions to predict air quality.

Air Quality Related to Hydrogen Sulfide Emissions

*Minnesota Ambient Air Quality Standards (MAAQS)*

52. The air modeling predicts that the Project will comply with the 30 parts per billion (ppb) hydrogen sulfide MAAQS. Under the hydrogen sulfide MAAQS, the third exceedance of the MAAQS within any 5-day period is a violation. The air modeling demonstrates compliance when the high-third-high hydrogen sulfide concentration (added to background concentration) for any 5-day period at each property-line receptor is less than 30 ppb.

53. The air modeling predicts that the Project emissions alone will result in a maximum property-line hydrogen sulfide concentration of 11.5 ppb. The estimated ambient air concentration for hydrogen sulfide in the Project area is 17 ppb. The total (Project emissions plus existing background) hydrogen sulfide concentration is predicted to be 28.5 ppb at the Project's property lines.

*Sub-Chronic Inhalation Health Risk Value (iHRV)*

54. The air modeling predicts that the Project will not exceed the 10 micrograms per cubic meter ($\mu g/m^3$) subchronic (13-week) hydrogen sulfide iHRV at neighboring residences. iHRVs are concentrations of chemicals emitted to air that are unlikely to pose a significant risk of harmful effects when humans are exposed to those concentrations over a specified period.

55. The air modeling predicts that the Project emissions alone will result in a maximum monthly hydrogen sulfide concentration of 1.8 $\mu g/m^3$ at the nearest residence. The estimated hydrogen sulfide background concentration in the Project area is 1.0 $\mu g/m^3$. The predicted total maximum monthly hydrogen sulfide concentration at the neighboring residences is 2.8 $\mu g/m^3$. Note that while the iHRV is for a 13-week period, AERMOD is not capable of averaging concentrations for that time-period, so a monthly averaging period was used instead. The monthly averaging period is acceptable because it produces a more conservative or protective prediction than the 13-week period.

56. Based on the air modeling results discussed above, the MPCA finds that hydrogen sulfide emissions expected from the Project do not present the potential for significant environmental effects.

Air Quality Related to Ammonia Emissions

*Acute iHRV*

57. The air modeling predicts that the Project will not exceed the 3,200 $\mu g/m^3$ (1-hour) acute ammonia iHRV at the Project's property-line.

58. The air modeling predicts that the Project emissions alone will result in a maximum hourly property-line ammonia concentration of 260 $\mu g/m^3$. The estimated ammonia background concentration in the Project area is 148 $\mu g/m^3$. The maximum total (Project emissions plus existing background) property-line ammonia concentration is predicted to be 408 $\mu g/m^3$.

*Chronic iHRV*

59. The air modeling predicts that the Project will not exceed the 80 $\mu g/m^3$ (1-year) chronic ammonia iHRV at neighboring residences to the Project site.

60. The air modeling predicts that the Project emissions alone will result in a maximum 1-year time averaged ammonia concentration of 9.51 $\mu g/m^3$ at the neighboring residences. The estimated ammonia background concentration in the Project area is 5.72 $\mu g/m^3$. The maximum total (Project emissions plus existing background) ammonia concentration is predicted to be 15.23 $\mu g/m^3$ at the nearest residences.

61. Based on the air modeling results discussed above, the MPCA finds that ammonia emissions expected from the Project do not present the potential for significant environmental effects.

Air Quality Related to Odor Emissions

62. Although the state of Minnesota has not established ambient air quality standards to regulate odor, B.I.L. completed air dispersion modeling for odor.

63. The modeled maximum hourly odor intensity at the Project's property lines, is 34 odor units per cubic meter ($OU/m^3$) and occurs on the north boundary line. This predicted odor intensity is considered "very faint" as defined by the air modeling report used in the EAW for this Project (Attachment K of EAW).

64. The modeled maximum hourly odor intensity, at the nearest residences, is 14 $OU/m^3$. This predicted odor intensity is considered to be "no odor."

65. B.I.L. has submitted an air emissions and odor management plan to the MPCA with its Feedlot Permit application. The plan includes measures that B.I.L. will take to minimize the generation of odors from its proposed feedlot and from associated manure application activities. B.I.L. will use

below ground manure storage pits and immediately inject manure into the soil as its manure application method to minimize odors. B.I.L. has also taken other measures as listed in item 6.B. of the EAW to further reduce odors.

66. Based on the modeling results discussed above, the MPCA finds that odor at B.I.L.'s property lines and nearby residences does not present the potential for significant environmental effects.

Summary of Air Quality Impacts

67. The MPCA expects the Project to meet applicable air quality standards and criteria.

68. With respect to the reversibility of air quality impacts expected to occur from the Project, air emissions from the Project will continue while it remains in operation and would cease only if the Project were temporarily or permanently closed.

69. If excessive air emissions or violations of the hydrogen sulfide MAAQS were to occur, or if B.I.L. exceeded iHRVs for hydrogen sulfide or ammonia, air quality impacts are likely to be correctable. The MPCA could initiate an investigation and require B.I.L. to make operation and maintenance changes. Therefore, the MPCA finds that any impacts on air quality that may occur from the Project are reversible.

70. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess the impacts on air quality that are reasonably expected to occur as a result of the Project.

71. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts on air quality that are reasonably expected to occur from the Project.

Public Comments on Impacts Related to *E. coli* Contamination in the Little Sioux River

72. The Project's existing facility and proposed facility will utilize beneath barn deep pits, which will be anaerobic. Anaerobic storage of manure has been shown to significantly reduce pathogens in manure and is the recommend BMP for reduction of pathogens in manure storage.[1] The Project will not include any pastures, open lots, or short-term stockpiles all of which can be significant contributors of bacteria to surface waters.[2]

73. The Project will incorporate manure at the time of application via knife infection. The recommended method [of manure application] is to incorporate manure soon after application.[3]

[1] http://lshs.tamu.edu/docs/lshs/end-notes/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems-1916131611/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems.pdf
[2] https://www.pca.state.mn.us/sites/default/files/wq-iw7-44e.pdf
[3] https://extension.umn.edu/manure-management/bmps-pathogen-control-manure#2.-reducing-pathogens-in-manure-collection-and-storage-824311

**Cumulative Potential Effects**

74. The second criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the "cumulative potential effects." In making this determination, the MPCA must consider "whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effects; and the efforts of B.I.L. to minimize the contributions from the project." Minn. R. 4410.1700 subp.7.b. The MPCA Findings with respect to this criterion are set forth below.

75. The EAW, public comments, and MPCA follow-up evaluation did not disclose any related or anticipated future projects that may interact with this Project in such a way as to result in significant cumulative potential environmental effects.

76. The EAW addressed the following areas for cumulative potential effects for the proposed Project:
    - Surface water and groundwater quality
    - Groundwater appropriation
    - Air quality

77. Written comments received during the comment period raised additional issues, as follows:
    - *E. coli* contamination in the Little Sioux River

<u>Surface Water and Groundwater Quality</u>

78. The Project and its associated manure application sites are all within the Little Sioux Watershed in Jackson County.

79. The Project and its manure application sites are in areas where the land use is predominantly agricultural.

80. The Little Sioux River is the closest listed impaired water body to the Project and its manure application site.

81. The Little Sioux River is within the Missouri River Basin. This 11.93-mile-long reach is listed as impaired in the 2018 Total Maximum Daily Load report. The reach has multiple impairments ranging from singularly *E. Coli*, to a combination of *E. Coli*, Fish Biological Indicators, and Turbidity.

82. B.I.L. will design and build the feedlot facility as a total confinement operation. This limits the potential for precipitation coming in contact with the animals or manure generated at the facility and creating contaminated runoff.

83. All manure is stored within storage structures approved by the MPCA and meet the design requirements of Minn. R. ch. 7020, which limits the potential for impacts to surface or groundwater quality. B.I.L. is required to examine any LMSA drain tile outlet monthly for water flow and signs of discoloration or odor in any water in the drain tile.

84. Minn. R. 7020.2003 and the Feedlot Permit prohibits discharge of manure, manure contaminated runoff, or process wastewater from the production area to waters of the state except when authorized by the Feedlot Permit as a result of extreme or chronic rainfall events. As a result, the discharge of manure or manure-contaminated runoff to waters of the state from the production area is not reasonably expected to occur.

85. All manure application must occur at agronomic rates and comply with Minn. R. ch. 7020, the Feedlot Permit and county setback requirements, as well as all other applicable federal, state, and local rules, whatever are the more restrictive.

86. Land application of manure from the facility is required to follow the MPCA-approved MMP. The manure from the Project will be injected or immediately incorporated into the soil.

87. If a manure spill occurs, B.I.L. is required to comply with the Emergency Response Plan developed as part of the Feedlot Permit application process and incorporated into the Feedlot Permit. Minn. Stat. 115.061 and the Feedlot Permit requires that all manure spills be reported to the Minnesota Duty Officer and requires all responsible parties to take immediate action to stop the discharge and recover the material.

88. Proper operation and management of the Project and adherence to appropriate manure land application practices in the MPCA-approved MMPs will limit the potential of manure and/or manure-contaminated stormwater runoff from impacting waters of the state

89. Since the Feedlot Permit and MMPs require preventative measures to protect surface water and groundwater quality, the MPCA does not anticipate the Project will contribute to any potential adverse effect on water quality. Therefore, the MPCA finds that the Project is not expected to contribute significantly to adverse cumulative potential effects on water quality.

Groundwater Appropriation

90. There is currently one well on the Project site. This existing well will supply the water for the entire Project. No additional wells will be installed for the Project. The existing well is registered with the MDH. B.I.L. expects to use approximately 1.8 million gallons annually, for a total consumption of approximately 44.2 million gallons over 25-years (i.e., doubling of current water use).

91. B.I.L. does not currently hold a Water Appropriation Permit from the DNR for its existing water well on the Project because the water use is below the DNR permit threshold. The Project will result in an increase in water use to withdraw over 1 million gallons per year and, therefore, a Water Appropriation Permit will be required for the Project. B.I.L. has submitted an application for a General Water Appropriation Permit for the Project to the DNR.

92. The purpose of the DNR permit program is to ensure management of water resources so that adequate supply is provided to long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power, and navigational uses, and water quality control. The permit program balances competing management objectives, including both the development and protection of water resources. Minn. Stat. § 103G.261 establishes domestic water use as the

highest priority of the state's water when supplies are limited. If a well interference arises, the DNR has a standard procedure for investigating the matter. If the DNR determines that a commercial operator is causing the problem, the operator must correct it.

93. The MPCA finds that the Project is not expected to contribute significantly to adverse cumulative potential effect on water appropriation.

Air Quality

94. The MPCA evaluated cumulative potential effects on air quality by comparing the MAAQS for hydrogen sulfide, iHRVs for hydrogen sulfide and ammonia, and odor intensity thresholds with concentrations in the air predicted by air modeling.

95. The modeling analysis included the estimated emissions from the Project, five nearby feedlots, and conservative background concentrations to evaluate the potential cumulative impacts of air emissions in the area of the Project. B.I.L. estimated air concentrations for these pollutants at the residences closest to the Project.

96. All modeled air pollutant concentrations for the Project were below the health-based criteria used in the analyses. Therefore, the MPCA finds that cumulative potential effects on air quality will not be significant in the Project area, and the Project will not contribute significantly to adverse cumulative potential effects on air quality.

Public Comments on Impacts Related to *E. coli* contamination in the Little Sioux River

97. As noted above, the Project will be implementing recommended BMPs to minimize the potential for bacteria and pathogen transport to the Little Sioux River. The existing facility is already incorporating these BMPs as part of its current operation.[4, 5]

98. As noted above, the Project will not include any pastures, open lots, or short-term manure stockpiles, which can be significant contributors of bacteria to surface waters.[6]

Cumulative Effects – Summary

99. Based on information on the Project obtained from air modeling reports and Feedlot Permit application processes, information on water quality and groundwater appropriation presented in the EAW, and consideration of potential effects due to related or anticipated future projects, the MPCA does not expect significant cumulative effects from this Project.

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[4] http://lshs.tamu.edu/docs/lshs/end-notes/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems-1916131611/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems.pdf

[5] https://extension.umn.edu/manure-management/bmps-pathogen-control-manure#2.-reducing-pathogens-in-manure-collection-and-storage-824311

[6] https://www.pca.state.mn.us/sites/default/files/wq-iw7-44e.pdf

100. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects related to cumulative potential effects that are reasonably expected to occur.

**The Extent to Which the Environmental Effects Are Subject to Mitigation by Ongoing Public Regulatory Authority**

101. The third criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project." Minn. R. 4410.1700, subp. 7.C. The MPCA Findings with respect to this criterion are set forth below.

102. The following permits or approvals will be required for the Project:

| Unit of Government | Permit or Approval Required |
|---|---|
| MPCA | Feedlot Permit |
| DNR | Water Appropriation Permit |
| Jackson County | Conditional Use Permit |

103. MPCA Feedlot Permit. The MPCA requires B.I.L. to obtain a Feedlot Permit for the Project. The Feedlot Permit incorporates construction and operation requirements and includes operating plans that address manure management, emergency response protocols, and odor/air quality management. The attachments are an enforceable condition of the Feedlot Permit.

104. Construction Stormwater. Construction stormwater requirements are incorporated by reference into the Feedlot Permit. Owners of feedlots not seeking Feedlot Permit coverage are still required to comply with all requirements of the current MPCA construction stormwater general permit but are not required to obtain construction stormwater permit coverage, unless the construction will disturb 5 or more acres.

105. DNR Water Appropriation Permit. There is currently one well at the Project site. This existing well will supply the water for the entire Project. The existing well is registered with the MDH. B.I.L. expects to use approximately 1.8 million gallons of water annually, for a total consumption of 44.2 million gallons over 25 years.

106. B.I.L. does not currently hold a Water Appropriation Permit from the DNR for its existing water well because its water use is currently below the DNR permit threshold. The Project would result in an increase in water use to withdraw over 1 million gallons per year, and therefore a Water Appropriation Permit will be required for the Project.

107. State law requires a Water Appropriations Permit for users withdrawing more than 10,000 gallons of water daily, or 1 million gallons annually. B.I.L. applied to the DNR for a General Water Appropriation Permit on December 27, 2017.

108. The DNR Water Appropriation Permit ensures the well user manages water resources so adequate supply is available for long-range seasonal requirements for domestic, agriculture, fish and wildlife,

recreation, power, navigation, and water quality. State law establishes domestic use as the highest priority when water supplies are limited, and, when well interference occurs, the DNR follows a standardized procedure of investigation.

109. Jackson County Conditional Use Permit. B.I.L. is required to obtain all required building and conditional use permits required by local units of government to ensure compliance with local ordinances. The Conditional Use Permit will address local zoning, environmental, regulatory, and other requirements needed to avoid adverse effects on adjacent land.

110. The above-listed permits include general and specific requirements for mitigation of environmental effects of the Project. The MPCA finds that the environmental effects of the Project are subject to mitigation by ongoing public regulatory authority.

**The Extent to Which Environmental Effects can be Anticipated and Controlled as a Result of Other Available Environmental Studies Undertaken by Public Agencies or the Project Proposer, Including Other EISs**

111. The fourth criterion that the MPCA must consider is "the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs," Minn. R. 4410.1700, subp. 7.D. The MPCA Findings with respect to this criterion are set forth below.

112. Although not exhaustive, the MPCA reviewed the following documents as part of the environmental impact analysis for the Proposed Project:
- Data presented in the EAW
- Feedlot Permit application, with MMPs and attachments
- Air Dispersion Modeling Report
- Minnesota's "Final Animal Agriculture Generic Environmental Impact Statement" (2002)
- Feedlot Permits and environmental review of similar projects

113. The MPCA also relies on information provided by B.I.L., persons commenting on the EAW, staff experience, and other available information obtained by staff.

114. The environmental effects of the Project have been addressed by the design and permit development processes, and by ensuring conformance with regional and local plans. No elements of the Project pose the potential for significant environmental effects.

115. Based on the environmental review, previous environmental studies by public agencies or the Project Proposer, and staff expertise and experience on similar projects, the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.

116. The MPCA adopts the rationale stated in the attached Responses to Comments (Appendix B) as the basis for response to any issues not specifically addressed in these Findings.

## CONCLUSIONS OF LAW

117. The MPCA has jurisdiction in determining the need for an EIS for this Project. The EAW, the permit development process, and the evidence in the record are adequate to support a reasoned decision regarding the potential significant environmental effects that are reasonably expected to occur from this Project.

118. The MPCA identified areas for potential significant environmental effects. The Project design and permits ensure B.I.L. will take appropriate mitigation measures to address significant effects. The MPCA expects the Project to comply with all environmental rules, regulations, and standards.

119. Based on a comparison of the impacts that are reasonably expected to occur from the Project with the criteria established in Minn. R. 4410.1700 subp. 7, the Project does not have the potential for significant environmental effects.

120. An EIS is not required for the proposed BIL 8 feedlot expansion Project.

121. Any Findings that might properly be termed conclusions and any conclusions that might properly be termed Findings are hereby adopted as such.

## ORDER

122. The Minnesota Pollution Control Agency determines that there are no potential significant environmental effects reasonably expected to occur from the BIL 8 feedlot expansion project and that there is no need for an Environmental Impact Statement.

**IT IS SO ORDERED**

Peter Tester, Deputy Commissioner

Laura Bishop, Commissioner
Minnesota Pollution Control Agency

8/15/19

Date

**APPENDIX A**

**Minnesota Pollution Control Agency**

**BIL 8**

**Environmental Assessment Worksheet (EAW)**

**LIST OF COMMENT LETTERS RECEIVED**

1. Kathy Dunn. E-mail received June 13, 2019.
2. Jason Walker, Southwest Regional Development Commission. E-mail received June 17, 2019.
3. Sarah J. Beimers, State Historical Preservation Office. Letter received July 5, 2019.
4. Kathy Metzker, Minnesota Department of Natural Resources. E-mail received July 10, 2019.
5. Angela Piltaver, Minnesota Department of Transportation. E-mail received July 10, 2019.
6. Jamie Konopacky, Minnesota Center for Environmental Advocacy. E-mail received July 10, 2019.

**From:** Kathy Dunn <lilbitdunn@yahoo.com>
**Sent:** Thursday, June 13, 2019 11:46 AM
**To:** Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
**Subject:** Hog Feed Lot in Jackson County

I am writing in regards to B.I.L. LLC and their proposal to expand its existing hog finishing feedlot in Section 31 of Minnesota Township, Jackson County, adding a second total confinement barn and increasing from 2,400 to 4,800 pigs.

As a citizen of Minnesota, I am in opposition to this proposal.

*First of all, these manure pits are known to leak and pollute ground water, rivers and streams. E-coli outbreaks are known to happen from the polluted water spreading to areas it was never intended to be spread to; manure sprayed on crops contaminated with e-coli causes plant foods to be tainted with the bacteria; and more.

*Second, holding this many pigs in one small area, catching their manure in the pits under them, are known for polluting the air in the surrounding areas and beyond, regardless of the measures taken to contain the manure and to stop air pollution. The MPCA claims the new feedlot would meet state air quality standards and would not significantly increase odors. In all feedlots of this magnitude, statistics show that they do increase odors. The fact that these barns are 'strategically located' to minimize odors is in testament to the risk that is taken in the community when these feedlots are allowed to be built.

*Also, this in inhumane treatment of sentient beings. All animals must be treated with the standards of care that meet their needs. These hogs are confined so tightly together that there is injury. These injuries will go untreated under standard industry practices. The industry calculates up to 20% loss due to disease and injury and counts the risk worth it for the profit this kind of "farming" brings them. Precautions are taken, without pain killer, by cutting off the incisor teeth, tails, and testicles of those pigs that will be raised for meet. This is extremely cruel treatment. These hogs will never make nests, raise their young, set foot on the natural ground, romp in the grass, feel the sunlight or the rain. Everything about a feedlot is unnatural for the animal. They live miserable pain filled lives only to have them end with a trip packed into a truck where many will meet their fate dying due to heat exhaustion and lack of water or be trampled to death, to be unpacked into a factory slaughterhouse setting where the pain and misery is multiplied as many will die piece by piece; scalded to death; watching those who go before them meet a terribly painful fate while listening to the screams of their fellow kind, the constant smell of blood and death all around.

*Raising animals for food this way is poor stewardship of the animals, the land, the grain and feed. Dousing their feed with antibiotics in order to keep disease down from raising them in this fashion is causing super bugs resistant to antibiotics. Growth hormones

cause them to grow large fast, and also cause people to do the same. Many, many illnesses people contract today are related to eating meat; some disease is directly caused to the way meat is raised in CAFOs.

NOTHING about the way we raise animals for food today is right. It isn't sustainable. It exploits not only the animal kingdom and the land itself, it exploits people groups, the poor, the uneducated.

Factory farming needs to come to a complete halt. Ethically, we have crossed a line that we should never have crossed; what we do to animals for food causes the Holocaust to pale in comparison. Nobel Prize laureate Isaac Bashevis Singer described the treatment of animals by humans as "an eternal Treblinka".

Mr. Peterson, you are in a position to stand up to these feedlots infesting Minnesota such as they have in Iowa (https://www.foodandwaterwatch.org/insight/urgent-case-factory-farm-moratorium-iowa). The problems that take place in Iowa are sure to take place here, as well. The land of 10,000 lakes is about to become the land of 10,000 polluted lakes.

But on the basics of ethics especially, Mr. Peterson, please take a stand. It is time people woke up to what it is we are doing with the stewardship of this earth and it's inhabitants, for both people and animals.

Thanks for you time,

A very concerned citizen,

Kathy Dunn

**From:** Jessica Welu <JessicaW@swrdc.org>
**Sent:** Monday, June 17, 2019 11:38 AM
**To:** Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
**Cc:** Jason Walker <JasonW@swrdc.org>
**Subject:** SRDC written comments on BIL, LLC Feedlot Project. If ?s, please contact Jason Walker at our office. Thanks-SRDC

**Southwest Regional Development Commission Project Review**

**Agenda Item:** 6 **Meeting Date**: 06/13/2019

**Project Name**: BIL Swine Feedlot – Environmental Assessment Worksheet

**Project Description:**

BIL Swine is proposing to expand their existing swine feedlot from a 720 Animal Unit (AU) swine facility to a 1,440 AU facility in Section 31, Minneota Township in Jackson County. BIL plans to add one power-ventilated barn with an eight-foot deep, concrete liquid manure storage area below the barn and a driveway. Construction will include an 8 x 8 x 4 foot temporary animal mortality storage box, a well for livestock watering and employee domestic use, and perimeter drain tile using 4-inch high density polyethylene tile.

BIL plans to begin construction in the early fall of 2019 and stock up to 4,800 swine (1,440 AUs). They will utilize best management practices in stormwater erosion prevention and sediment control (BMPs), including silt fence and top soil stripping and stockpiling. In order to use the 523'-deep well that exists on site, BIL must apply for and receive DNR water appropriation permit coverage since it will increase consumption over 1 million gallons per year.

There are 19 feedlots within 3 square miles of the proposed facility. There are also five residences within 1 mile of the facility, with the nearest being 2,709' south. The project and land application sites are in the Little Sioux watershed with the river located approximately 433 feet east of the proposed project site. Spirit Lake is the nearest incorporated town located 4.19 miles east of the project site. There is one occurrence of a rare species in a 1-mile radius—the Henslow's sparrow; however, the site project would not disturb their natural habitat.

BIL plans to use 8 manure application sites, four of which are located in Minneota Township, and four of which are located in Sioux Valley Township in Jackson County. All application sites are on existing cropland. The project is designed to prevent any leaking of manure that would contaminate the Little Sioux watershed or the unnamed stream in several of the application sites.

Staff Comments:

- Staff contacted Jackson County Land Management office and they expressed no immediate concerns. This project site is in a low traffic area and will only slightly increase the road usage. The director stated this project appeared low-risk.

**Project Review Time**: 2 hours

**Income to the SRDC as a result of this review:** $0

**Reviewer:** Jason Walker

DEPARTMENT OF ADMINISTRATION
STATE HISTORIC PRESERVATION OFFICE

July 3, 2019



Mr. Charles Peterson
Resource Mgmt and Assistance Div.
MPCA
520 Lafayette Rd N
St. Paul, MN 55155

RE: EAW - BIL 8 Feedlot Expansion
T101 R36 S31 SW
Minneota Twp., Jackson County
SHPO Number: 2019-1842

Dear Mr. Peterson:

Thank you for providing this office with a copy of the Environmental Assessment Worksheet (EAW) for the above-referenced project.

Based on our review of the project information, we conclude that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this project is considered for federal financial assistance, or requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of review and consultation under Section 106.

Please contact our Environmental Review Program at (651) 201-3285 if you have any questions regarding our review of this project.

Sincerely,

Sarah J. Beimers

Sarah J. Beimers
Environmental Review Program Manager

DEPARTMENT OF
NATURAL RESOURCES

MINNESOTA DEPARTMENT OF NATURAL RESOURCES
CENTRAL OFFICE
500 LAFAYETTE ROAD, BOX 25
SAINT PAUL, MN 55155
651-296-6157
888-646-6367

July 10, 2019

Charles Peterson
Resource Managementand Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Re: BIL 8 confined swine facility expansion Environmental Assessment Worksheet

Dear Mr. Peterson:

Thank you for the opportunity to review and comment on the Environmental Assessment Worksheet (EAW) for the proposed BIL 8 confined swine facility expansion project in Minneota Township, Jackson County, Minnesota. The proposed project will add one power-ventilated barn with an eight-foot deep, concrete liquid manure storage area below the barn and driveway. Minnesota Department of Natural Resources (MN DNR) staff have reviewed the EAW and have no comments at this time.

We appreciate the opportunity to review this project. Please provide the notice of decision on the need for an Environmental Impact Statement (EIS). Please be aware that this letter does not constitute approval by the MN DNR of any or all elements of the project for the purpose of pending or future permit action(s) by the MN DNR. Ultimately, it is the responsibility of the project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this EAW, please contact me by email at Kathleen.metzker@state.mn.us or by telephone at 651-259-5694.

Sincerely,

Kathy Metzker
Project Manager
Environmental Review Unit
MN DNR Conservation Assistance and Regulation Section

**From:** Piltaver, Angela (DOT) <angela.piltaver@state.mn.us>
**Sent:** Wednesday, July 10, 2019 4:02 PM
**To:** Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
**Subject:** BIL 8 EAW for proposed swine facility expansion in Jackson County, MN

Charles,

Good afternoon. We received a copy of the BIL 8 EAW for the proposed expansion of a total confinement 720 Animal Unit swine facility to 1,440 Animal Units on property owned by BIL, LLC in Jackson County, MN. At this time, we have no comments on the proposed expansion. Thank you for the opportunity to review the EAW.

Angela Piltaver, AICP, LEED AP
Senior Planner
MnDOT District 7
2151 Bassett Drive
Mankato, MN 56001-6888
507-304-6196
angela.piltaver@state.mn.us


Minnesota Center for
Environmental Advocacy

July 10, 2019

Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
Phone: 651-757-2856
Fax: 651-297-2343
Email: charles.peterson@state.mn.us

Brent Riess
Watershed Division
Minnesota Pollution Control Agency
1420 E College Drive, Suite 900
Marshall, MN 56258
Phone: 507-476-4268
Email: brent.riess@state.mn.us

Dear Mr. Charles Peterson and Mr. Brent Riess,

Thank you for the opportunity to provide comments on the Environmental Assessment Worksheet ("EAW") for the proposed expansion of the BIL, LLC swine feedlot facility ("BIL Facility").[1] The Minnesota Center for Environmental Advocacy ("MCEA") requests that the Minnesota Pollution Control Agency ("the Agency") also consider this comment a petition to the Commissioner to develop an individual permit for the BIL facility.[2]

MCEA working with an expert team of geospatial analysts at the Environmental Working Group ("EWG") has reviewed the EAW and concluded that it includes wholly inadequate and erroneous individual and cumulative assessments of the potential for *E. coli* contaminated manure runoff and surface water pollution in the Little Sioux River. Specifically, the EAW fails to meaningfully analyze the BIL facility's existing *E. coli* contaminated manure runoff threat and the heightened threat that will result from the facility spreading 1.57 million gallons of manure annually on fields in close proximity to the already impaired Little Sioux River and on fields that border or may contain tributaries to same.[3] The EAW also fails to provide any analysis of the

[1] Minnesota Pollution Control Agency, "Environmental Assessment Worksheet for the BIL 8 EAW" (2019), [hereinafter "EAW"].
[2] 40 CFR § 122.28 (b) (3)
[3] *See* discussion of manure application sites in section 2 of the EAW. Site 1 ("There is an unnamed intermittent stream along the northeast corner of the site."); Site 2 ("An unnamed intermittent stream flows from the northeast edge of the field to the middle of the field."); Site 3 ("An unnamed intermittent stream flows through the middle of the field from the southwest corner to the northeast corner."); Site 4

current or future cumulative *E. coli* threat resulting from the BIL facility and neighboring facilities spreading manure in the same small area of the Little Sioux River Watershed.

The BIL Facility presents an existing potential for significant environmental effects that would only be exacerbated by the proposed expansion. Accordingly, the Agency cannot continue to permit the existing facility or the proposed expanded facility under Minnesota's General Feedlot Permit.[4] Instead, the Agency must develop site-specific permit conditions through an individual permit process for the BIL Facility. The Agency must also conduct additional environmental assessment of the potential for substantial water quality impacts from *E. coli* contaminated manure runoff through an Environmental Impact Statement ("EIS").[5]

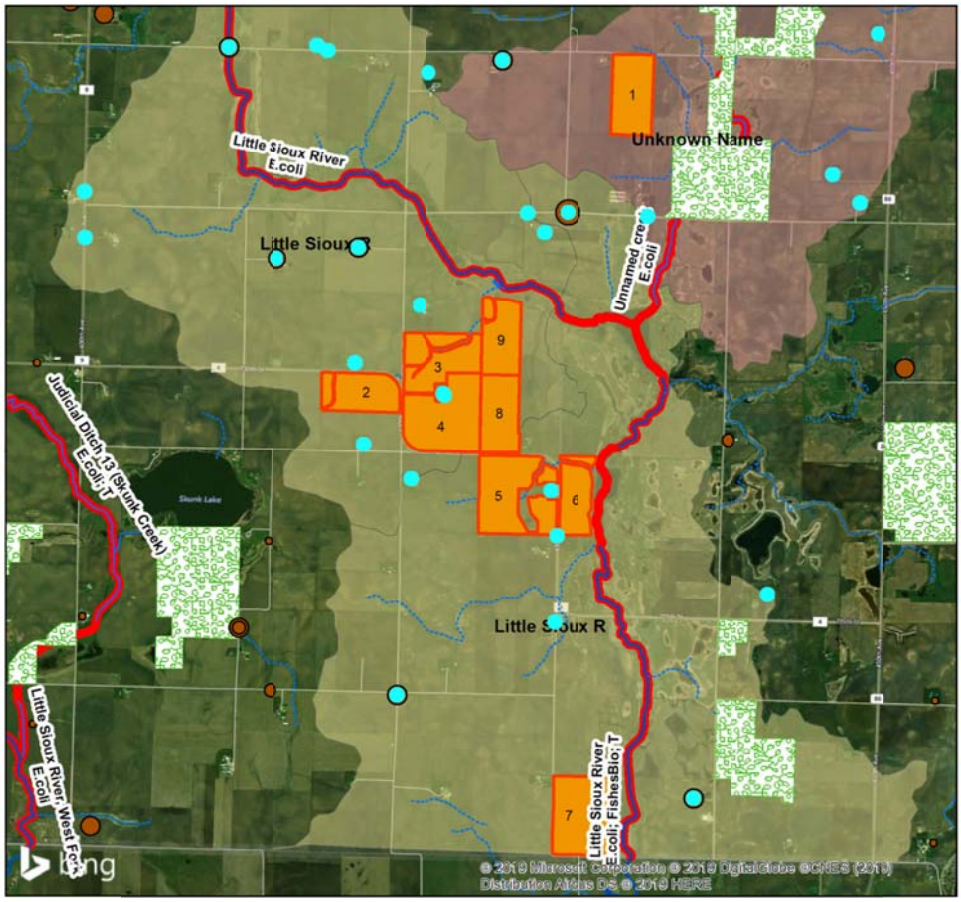


**Figure 1:** Map showing the BIL Facility's manure spreading fields directly adjacent to the *E. coli* impaired Little Sioux River and manure spreading fields containing tributaries to the same.[6]

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("An unnamed intermittent stream flows from the northeast edge of the field to the middle of the field."); Site 5 ("An unnamed intermittent stream flows from the northeast edge of the field to the middle of the field."); Site 6 ("The Little Sioux River is along the east edge of the site."); Site 7 ("The Little Sioux River is within ¼ mile to the east of the site. The project is within this land application site."); Site 8/9 ("The Little Sioux River is within ¼ mile to the north of the site.").

[4] Minnesota Rule 7001.0210 Subp. 6 (A).

[5] Minn. R. 4410.1700, Subp. 7.

[6] EAW, Attachment L.

## Background on the E. coli Threat:

The state of Minnesota monitors for *E. coli* to determine the potential presence of fecal waste in waterbodies.[7] *E. coli* is a pathogen found in animal manure that causes disease in animals and humans.[8] How much *E. coli* is present in manure depends on animal species, diet, animal age and health, physical and chemical characteristics of manure and manure storage practices.[9] Surface water and groundwater can become contaminated with *E. coli* if manure is applied to farm fields and the manure runs off into nearby waterbodies or leaches into aquifers.[10] Scientific research on *E. coli* water contamination suggests that multiple management measures may be required to reduce the pathogen content of large quantities of manure and to prevent pathogens from entering ground and surface water.[11] Effectively controlling *E. coli* requires managing the pathogens in the animals themselves, during manure collection and storage, and also during land application.[12]

In addition to managing the *E. coli* content of manure to prevent water contamination, manure needs to be managed to protect human health.[13] The elderly, children and other susceptible individuals may be sickened by even minimal exposure to pathogens.[14] Human exposure to E. coli can result in fever, abdominal pain, diarrhea, vomiting, nausea and even death.[15]

## E. coli Contamination from the BIL Facility and Nearby Feedlots in the Little Sioux River Watershed:

Monitoring results for the Little Sioux River provide appalling and frightening evidence that the Little Sioux River is already completely inundated with fecal waste from livestock and poses a substantial threat to public health. The Missouri River Basin Total Maximum Daily Load for the Lower Big Sioux River, Little Sioux River, and Rock River Watersheds ("TMDL") identifies six reaches of the Little Sioux River that are polluted with *E. coli* bacteria.[16] One monitoring result for the Little Sioux River shows a monthly geometric mean concentration of 1,300 colony forming units. This is more than ten times the state *E. Coli* standard of 126 colony forming units per 100 milliliters of water. Several additional monitoring samples show levels that

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[7] https://www.pca.state.mn.us/water/bacteria
[8] University of Minnesota Extension, Mindy Spiehs and Sagar Goyal, "Best Management Practices for Pathogen Control in Manure Management Systems" (2007)
[9] Christy E. Manyi-Loh et al., "An Overview of the Control of Bacterial Pathogens in Cattle Manure" (2016).
[10] University of Minnesota Extension, Mindy Spiehs and Sagar Goyal, "Best Management Practices for Pathogen Control in Manure Management Systems" (2007).
[11] Christy E. Manyi-Loh et al., "An Overview of the Control of Bacterial Pathogens in Cattle Manure" (2016).
[12] *Id.*
[13] *Id.*
[14] University of Minnesota Extension, Mindy Spiehs and Sagar Goyal, "Best Management Practices for Pathogen Control in Manure Management Systems" (2007).
[15] *Id.*
[16] Minnesota Pollution Control Agency, "The Missouri River Basin Total Maximum Daily Load," 17 (2018).

are five to six times the state standard.[17] According to the TMDL, livestock animals account for 99% of total *E. coli* in the Little Sioux River and other studied waterbodies in the Missouri River watershed.[18]

EWG conducted an analysis to determine the risk of excessive manure spreading on farm fields in the Little Sioux River Watershed. This analysis makes clear why livestock feedlots are responsible for 99% of *E. coli* contamination in the Little Sioux River. In its analysis, EWG identified 211 crop fields in a three-mile radius surrounding the BIL Facility that could be available for manure spreading. These fields, however, are very likely already being used to spread manure from dozens of other nearby animal feeding operations. To conduct its assessment, EWG used the number of existing animal feeding operations within three miles of a crop field as an indicator of the potential use of a field for manure spreading and as an indicator of the "pressure" on the field to accept manure from several operations. EWG's analysis shows that each of the 211 crop fields in the area is surrounded by between 4 to 18 existing feedlot facilities. This indicates that fields in the Little Sioux River Watershed are under substantial pressure to accept huge quantities amounts of manure from nearby feedlot operations.

The below bar graph visually displays the results of EWG's analysis. Twenty-two percent of the fields (46 fields) within three miles of the BIL Facility are already surrounded by more than 15 existing animal feeding operations. Fifty percent (105 fields) are surrounded by between 10 and 14 existing operations, and 28 percent (60 fields) by between 4 and 9 existing operations. All of the operations surrounding this cluster of 211 farm fields around the BIL Facility are competing to spread manure on the same fields, or, alternatively, could already be excessively spreading manure on the same fields and drastically increasing the risk of *E. coli* contaminated runoff to the Little Sioux River and its tributaries. The high *E. coli* levels in the Little Sioux River present strong evidence that the latter overapplication scenario may be occurring, and it is the responsibility of the Agency to complete an EIS to further investigate this potential significant threat to water quality.

[17] *Id.* at 37 (2018); https://www.pca.state.mn.us/water/bacteria.
[18] Minnesota Pollution Control Agency, "The Missouri River Basin Total Maximum Daily Load," 42 (2018).

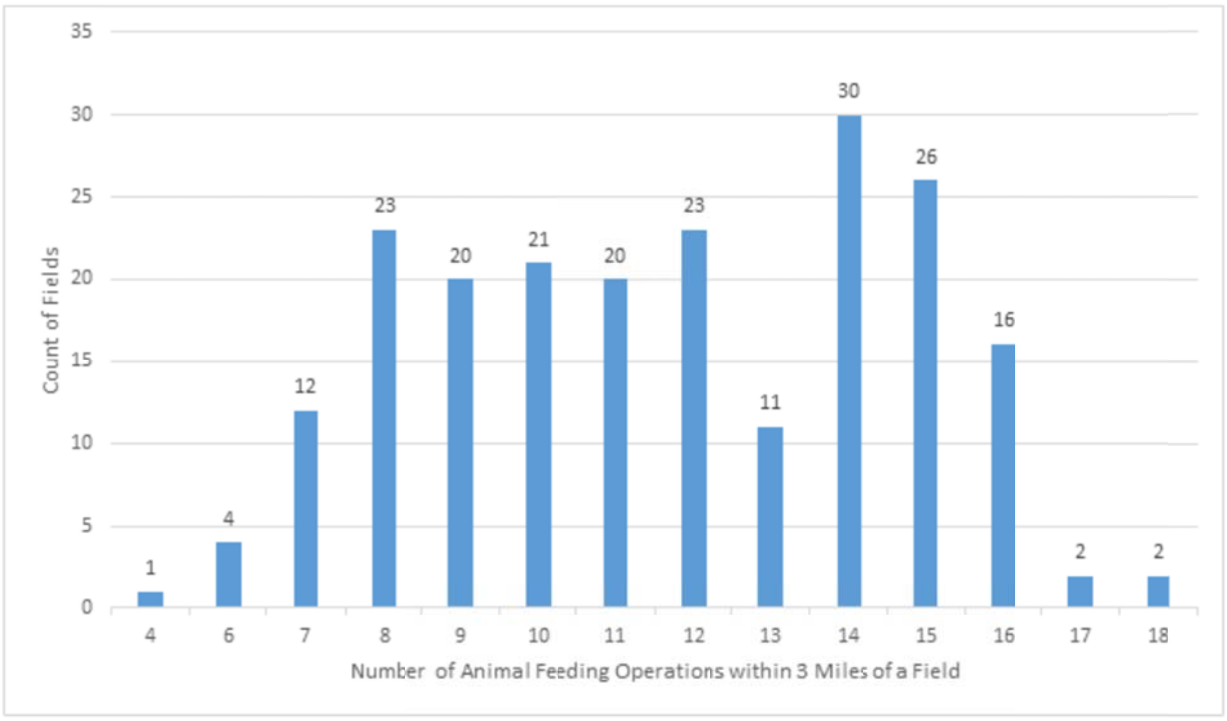


**Figure 2:** Graph showing the number of facilities surrounding agricultural fields in a three-mile radius around the BIL Facility.

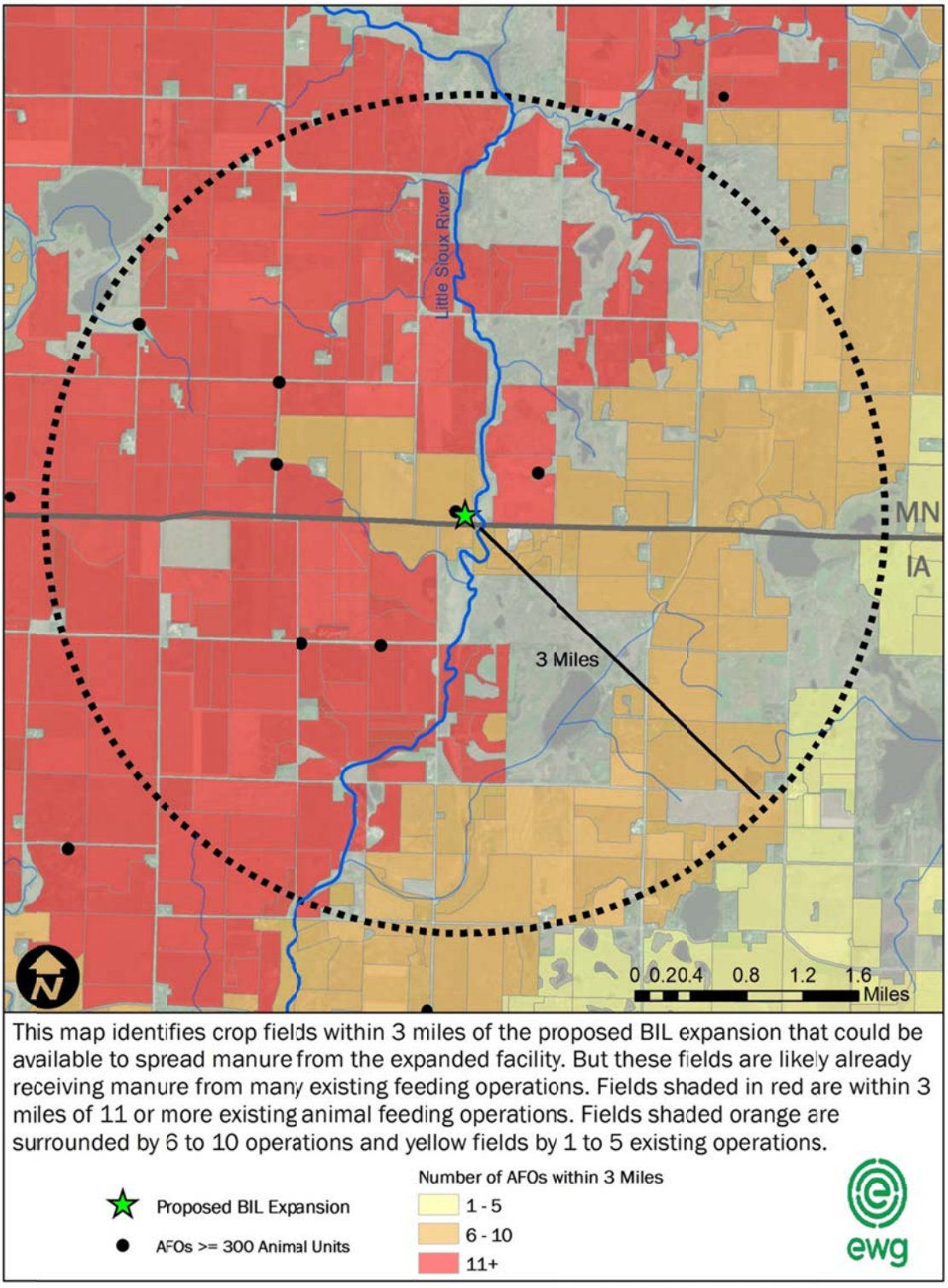


**Figure 3:** Map showing relative pressure for excessive manure application on farm fields within a three-mile radius of the BIL Facility.

The fields on which the BIL Facility proposes to spread 1.57 million gallons of manure annually are located nearby (approximately 400 feet away from) the impaired Little Sioux River and directly adjacent to tributaries of the Little Sioux River.[19] Without even considering the impact of manure spreading from other nearby facilities, it is clear that *E. coli* contaminated manure runoff from the BIL Facility itself poses a unique and substantial potential water pollution threat to an already impaired river. The potential for significant water quality impacts generated solely from the BIL Facility's manure spreading necessitates that the Agency complete an EIS, revoke the BIL Facility's general permit and issue an individual permit. This substantial potential for water pollution from *E. coli* contaminated runoff is amplified considerably by the large number of nearby facilities that, according to EWG's expert analysis, may already be spreading manure in the same small area of the watershed.

The Agency's own TMDL shows that the Little Sioux River is inundated with *E. coli*, an indicator bacteria for livestock fecal waste, and that existing feedlot facilities have caused 99% of the existing *E. coli* water pollution. Moreover, in its TMDL, the Agency notes that restoration of water quality will require the implementation of feedlot best management practices. Despite knowing that feedlots are responsible for the *E. coli* contamination in the Little Sioux River and that feedlot best management practices must be implemented to address the problem, the Agency has failed in this EAW to identify the BIL Facility—a large feedlot that spreads manure next to the Little Sioux River—as a substantial potential source of *E. coli* pollution to the waterbody. The Agency has also completely omitted any cumulative *E. coli* pollution impact assessment.

Despite the substantial potential water quality and public health threat posed by fecal waste in the Little Sioux River, the Agency has included only *two sentences* in the EAW that address *E. coli* contaminated manure runoff from the BIL Facility. In section eleven of the EAW, the Agency states, "Finally, the swine manure from the Project is liquid and is incorporated into the soil during land application. Thus, the potential for bacteria-laden manure runoff is greatly reduced."[20] Given the clear statement of the *E. coli* problem and the livestock manure runoff cause in the TMDL, this is a wholly inadequate assessment of the potential for significant environmental impacts from the BIL Facility and its neighbor facilities.

**Conclusion:**

To fully understand the environmental and public health threat from fecal waste in the Little Sioux River, the Agency must review the manure management plans for each of the feedlots surrounding the BIL Facility and clearly identify fields receiving manure. Based on this information, the Agency must then use its permitting authority to ensure that application is not occurring in a manner that contributes to the *E. coli* impairment in the Little Sioux River. This could happen, for example, if manure is being applied in unsafe amounts or in high-risk locations near the Little Sioux River or its tributaries. To protect the Little Sioux River and public health, the Agency must require facilities to implement best management practices in manure management plans that address the unique threat of *E. coli* contaminated runoff. MCEA requests that the agency conduct this required additional analysis through an EIS and immediately begin an individual permit process for the BIL Facility. Continued coverage under Minnesota's

[19] *See* above Figure 1 and footnote 2
[20] EAW at 19.

General Feedlot Permit is not appropriate given the BIL Facility's reasonable potential to cause or contribute to the *E. coli* impairment in the Little Sioux River and the need for site-specific best management practices to address this unique pollution threat.[21]

Respectfully,

/s/Jamie Konopacky
Jamie Konopacky
Water Quality Program Director
Minnesota Center for Environmental Advocacy
jkonopacky@mncenter.org
(651) 287-4866

[21] Minnesota Rule 7001.0210 Subp. 6 (A); 40 CFR 122.44(d)(1)(i).

**Minnesota Pollution Control Agency (MPCA)**

**BIL 8**
**Environmental Assessment Worksheet (EAW) and**
**General State of Minnesota Animal Feedlot National Pollutant Discharge Elimination System (NPDES) Permit (Feedlot Permit) coverage**

**RESPONSES TO COMMENTS ON THE EAW and Feedlot Permit**

## 1. Kathy Dunn. E-mail received June 13, 2019.

**Comment 1-1:** As a citizen of Minnesota, I am in opposition to this proposal.

**Response:** The decision on whether to issue or deny a permit is made under Minn. Stat. ch. 116.07 subp. 7 Subd. 7C, which provides that the MPCA must grant coverage under the Feedlot Permit if the Project meets all the requirements for coverage as stated in the Feedlot Permit and Minn. R. ch. 7020, the Feedlot Rules.

**Comment 1-2:** These manure pits are known to leak and pollute ground water, rivers and streams.

**Response:** Minn. R. ch. 7020 and the Feedlot Permit require design plans and construction specifications for Liquid Manure Storage Areas (LMSAs) to be submitted to the MPCA, and reviewed and approved by MPCA feedlot engineers. The LMSAs must be designed, constructed, operated and maintained according to the MPCA approved design plans and construction specifications, which are meant to be protective of all media. The Feedlot Permit also contains requirements for monitoring the level of manure in LMSAs, observing tile lines for evidence of leakage, and reporting. Feedlot facilities that are not meeting requirements, including leaking beyond standards, are required to correct problems that are identified and are subject to enforcement action.

**Comment 1-3:** E-coli outbreaks are known to happen from the polluted water spreading to areas it was never intended to be spread to; manure sprayed on crops contaminated with e-coli causes plant foods to be tainted with the bacteria; and more.

**Response:** See response to comment 6-3.

**Comment 1-4:** Holding this many pigs in one small area, catching their manure in the pits under them, are known for polluting the air in the surrounding areas and beyond, regardless of the measures taken to contain the manure and to stop air pollution. The MPCA claims the new feedlot would meet state air quality standards and would not significantly increase odors. In all feedlots of this magnitude, statistics show that they do increase odors. The fact that these barns are 'strategically located' to minimize odors is in testament to the risk that is taken in the community when these feedlots are allowed to be built.

**Response:** Part 6 of the EAW details the expected impacts to air quality from the Project. Identified are potential sources of odor and air pollutants, and proposed on-site mitigation measures. To summarize the EAW information, the Project underwent air dispersion modeling using the U.S. Environmental Protection Agency (EPA) approved American Meteorological Society/EPA Regulatory Model (AERMOD). AERMOD predicts that the Project will comply with the Minnesota Ambient Air Quality Standard

(MAAQS) for hydrogen sulfide. AERMOD also predicted that the Project's emissions, along with the emissions from the five neighboring feedlots in a 9 square mile grid, would not result in concentrations of hydrogen sulfide and ammonia above the Minnesota Department of Health inhalation Health Risk Values (iHRVs).

The State of Minnesota does not regulate odors. The MPCA includes odor in the modeling for feedlot EAWs to provide local decision makers with expected odor levels from the Project. It is up to local decision makers how they will utilize the information in their permitting process. The modeling does predict that there will be some odors from the Project in the "Very Faint" range of odor intensity.

**Comment 1-5:** Also, this in inhumane treatment of sentient beings. All animals must be treated with the standards of care that meet their needs. These hogs are confined so tightly together that there is injury. These injuries will go untreated under standard industry practices. The industry calculates up to 20% loss due to disease and injury and counts the risk worth it for the profit this kind of "farming" brings them. Precautions are taken, without pain killer, by cutting off the incisor teeth, tails, and testicles of those pigs that will be raised for meat. This is extremely cruel treatment. These hogs will never make nests, raise their young, set foot on the natural ground, romp in the grass, feel the sunlight or the rain. Everything about a feedlot is unnatural for the animal. They live miserable pain filled lives only to have them end with a trip packed into a truck where many will meet their fate dying due to heat exhaustion and lack of water or be trampled to death, to be unpacked into a factory slaughterhouse setting where the pain and misery is multiplied as many will die piece by piece; scalded to death; watching those who go before them meet a terribly painful fate while listening to the screams of their fellow kind, the constant smell of blood and death all around.

**Response:** Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

**Comment 1-6:** Raising animals for food this way is poor stewardship of the animals, the land, the grain and feed. Dousing their feed with antibiotics in order to keep disease down from raising them in this fashion is causing super bugs resistant to antibiotics.

**Response:** Under new regulations issued by Federal Drug Administration (FDA), effective January 1, 2017, feedlot owners, including BIL 8, can no longer use antibiotics on animals for general production purposes. With licensed veterinary oversight, antibiotics may still be used for specific animal health purposes. See FDA website for more information:
https://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/

**Comment 1-7:** Growth hormones cause them to grow large fast, and also cause people to do the same. Many, many illnesses people contract today are related to eating meat; some disease is directly caused to the way meat is raised in CAFOs.

**Response:** Growth hormones are not approved by the Food and Drug Administration for commercial use in food animals at this time.

**Comment 1-8:** Nothing about the way we raise animals for food today is right. It isn't sustainable. It exploits not only the animal kingdom and the land itself, it exploits people groups, the poor, the uneducated.

**Response:** Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

**Comment 1-9:** Factory farming needs to come to a complete halt. Ethically, we have crossed a line that we should never have crossed; what we do to animals for food causes the Holocaust to pale in comparison. Nobel Prize laureate Isaac Bashevis Singer described the treatment of animals by humans as "an eternal Treblinka".

**Response:** Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

**Comment 1-10:** Mr. Peterson, you are in a position to stand up to these feedlots infesting Minnesota such as they have in Iowa (https://www.foodandwaterwatch.org/insight/urgent-case-factory-farm-moratorium-iowa). The problems that take place in Iowa are sure to take place here, as well. The land of 10,000 lakes is about to become the land of 10,000 polluted lakes.

**Response:** Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

**Comment 1-11:** But on the basics of ethics especially, Mr. Peterson, please take a stand. It is time people woke up to what it is we are doing with the stewardship of this earth and it's inhabitants, for both people and animals.

**Response:** Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

## 2. Jason Walker, Southwest Regional Development Commission (SWRDC). E-mail received June 17, 2019.

**Comment 2-1:** SWRDC Staff contacted Jackson County Land Management office and they expressed no immediate concerns. This Project site is in a low traffic area and will only slightly increase the road usage. The director stated this Project appeared low-risk.

**Response:** The MPCA notes the comment.

**3. Sarah J. Beimers, State Historical Preservation Office (SHPO). Letter received July 5, 2019.**

**Comment 3-1:** Commenter states that based on their review of the Project information, SHPO staff conclude that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this Project.

**Response:** The MPCA notes the comment.

**Comment 3-2:** Commenter states that this letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this Project is considered for federal financial assistance, of requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of and consultation under Section 106.

**Response:** The MPCA notes the comment.

**4. Kathy Metzker, Minnesota Department of Natural Resources (MDNR). E-mail received July 10, 2019.**

**Comment 4-1:** Minnesota Department of Natural Resources (MDNR) staff have reviewed the EAW and have no comments at this time.

**Response:** The MPCA notes the comment.

**5. Angela Piltaver, Minnesota Department of Transportation (MnDOT). E-mail received July 10, 2019.**

**Comment 5-1:** At this time, MnDOT staff have no comments on the Project.

**Response:** The MPCA notes the comment.

**6. Jamie Konopacky, Minnesota Center for Environmental Advocacy (MCEA). E-mail received July 10, 2019.**

**Comment 6-1:** The EAW fails to meaningfully analyze the BIL facility's existing *E.coli* contaminated manure runoff threat and the heightened threat that will result from the facility spreading 1.57 million gallons of manure annually on fields in close proximity to the already impaired Little Sioux River and on fields that border or may contain tributaries to same.

**Response:** The MPCA does not consider the EAW complete until the MPCA has received and reviewed a complete Feedlot Permit Application. As part of the Feedlot Permit Application, the Proposer was required to submit a manure management plan (MMP) that is compliant with Minnesota Rules for land application of manure. Minnesota Rules for land application of manure were developed specifically to protect the environment and human health. The MPCA reviewed the submitted MMP and determined the MMP to be compliant with Minnesota Rules.

As noted in Response to Comment 6-3, the recommended Best Management Practices (BMPs) to control pathogens and bacteria are to store the manure in anaerobic pits; and, to incorporate the manure as soon as possible when being land applied. The existing facility is compliant with the Feedlot Permit and Minn. R. 7020 and incorporates these BMPs.

**Comment 6-2:** The EAW also fails to provide any analysis of the current or future cumulative *E. coli* threat resulting from the BIL facility and neighboring facilities spreading manure in the same small area of the Little Sioux River Watershed.

**Response:** As noted in Response to Comment 6-3, the recommended BMPs to control pathogens and bacteria are to store the manure in anaerobic pits; and, to incorporate the manure as soon as possible when being land applied. Both the existing building and the proposed building will be compliant with these BMPs. See response to comments 6-1, 6-3 and 6-4.

**Comment 6-3:** Scientific research on *E. coli* water contamination suggests that multiple management measures may be required to reduce the pathogen content of large quantities of manure and to prevent pathogens from entering ground and surface water. Effectively controlling *E. coli* requires managing the pathogens in the animals themselves, during manure collection and storage, and during land application.

**Response:** University of Minnesota Extension Service bulletin BMPs for Pathogen Control in Manure Management Systems states, "Deep pits, also an anaerobic storage system, located beneath animal housing facilities, are commonly used in Minnesota. In an anaerobic system, bacteria are not exposed to oxygen. Although bacteria can survive anaerobic conditions for long periods of time, most pathogens are reduced within 30 days." (Page 5)[1]

The MPCA notes that the Project is designed to utilize deep pits for the storage of manure.

Also, Chryseis Modderman, Extension Educator for the University of Minnesota Extension service provides the following recommendation for application of manure on the web page BMPs for pathogen control in manure: "Pathogen concentrations decrease when exposed to UV light and drying. Since that naturally occurs when manure is surface applied, delaying manure incorporation will reduce pathogen numbers. However, waiting to incorporate manure can have adverse environmental effects as nitrogen is lost to the atmosphere and runoff risk is increased. Flies and vermin are also more likely to pick up and carry pathogens from manure that is left on the surface. Therefore, the recommended method is to incorporate manure soon after application."[2]

The MPCA notes that BIL will be injecting the manure at the time of application to cropland via knife injection method that helps prevent bacteria from entering surface water.

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[1] http://lshs.tamu.edu/docs/lshs/end-notes/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems-1916131611/bmps%20for%20pathogen%20control%20in%20manure%20management%20systems.pdf

[2] https://extension.umn.edu/manure-management/bmps-pathogen-control-manure#2.-reducing-pathogens-in-manure-collection-and-storage-824311

**Comment 6-4:** One monitoring result for the Little Sioux River shows a monthly geometric mean concentration of 1,300 colony forming units. This is more than ten times the state *E. coli* standard of 126 colony forming units per 100 milliliters of water. Several additional monitoring samples show levels that are five to six times the state standard. According to the TMDL, livestock account for 99% of the total *E. coli* in the Little Sioux River and other studied waterbodies in the Missouri River watershed.

**Response:** MCEA states that the TMDL report for the Missouri River indicates that livestock account for 99% of the total *E. coli* in the Little Sioux River and other studied waterbodies in the Missouri River Watershed. This statement is not accurate. Appendix C - Bacteria Source Assessment, Table C-5 of the TMDL report states that livestock accounts for an estimated 99% of the bacteria production by animal units in the watershed, not 99% of the total *E. coli* in the Little Sioux River. Livestock are the largest contributor of bacteria to bacteria impaired reaches covered in the TMDL, however, exceedances do occur during low-flow conditions. This suggests that failing subsurface treatment systems (SSTS) and/or livestock animals in the stream corridors are important sources during certain hydrologic conditions. The TMDL report states that implementation activities will need to focus on feedlot and pasture management BMPs, livestock exclusion from waterways, and SSTS upgrades.

The MPCA notes the Project does not include any pastures and all manure will be injected into the soil at the time of application via knife application.

The TMDL report also mentions:

1) There are 283 feedlots located within 1,000 feet of a lake or 300 feet of a stream or river, an area generally defined as shoreland; 213 of these feedlots in shoreland have open lots. Open lots present a potential pollution hazard if the runoff from the open lots is not treated prior to reaching surface water (Page 42-43 Missouri River Basin TMDL Report[3]).

   The MPCA notes the Project does not include any open lots.

2) Short term stockpile sites are defined in Minn. R. ch. 7020 and are considered temporary. Any stockpile kept for longer than a year must be registered with the MPCA and would be identified as part of a feedlot facility. Because of the temporary status of the short term stockpile sites, and the fact they are usually very near or at the land application area, they are included in with the land applied manure (Page 47 Missouri River Basin TMDL Report[4]).

   The MPCA notes the Project does not include any short term stockpiles. The Project will generate liquid, and not solid manure. The liquid manure cannot be stockpiled, and will be stored in the LMSA.

3) Based on the MPCA feedlot staff analysis of feedlot demographics, knowledge, and actual observations, there is a significant amount of late winter solid manure application (before the ground thaws). During this time the manure can be a source of *E. coli* in rivers and streams, especially during precipitation events (Page 47 Missouri River Basin TMDL Report[5]).

[3] https://www.pca.state.mn.us/sites/default/files/wq-iw7-44e.pdf
[4] Ibid.
[5] Ibid.

The MPCA notes liquid manure cannot be applied to frozen or snow covered ground except under specific circumstances as provided for in the Feedlot Permit/Rule. The Proposer has designed the Project, including the LMSAs to provide more than sufficient storage of liquid manure.

4) Livestock can contribute bacteria to the watershed through runoff from pasture areas in riparian zones as well as direct loading if livestock are allowed access to streams or lakes. Livestock access to streams is a common practice and concern in these watersheds (Page 47 Missouri River Basin TMDL Report[6]).

   As noted earlier, the Project does not include any pastures.

The TMDL Report also states that "The MPCA currently uses the federal definition of a Confined Animal Feeding Operation (CAFO) in its permit requirements of animal feedlots along with the definition of AU. In Minnesota, the following types of livestock facilities are issued, and must operate under, a National Pollutant Discharge Elimination System (NPDES) Permit or a state issued State Disposal System (SDS) Permit (Permit): a) all federally defined CAFOs which have had a discharge, some of which are under 1000 AUs in size; and b) all CAFOs and non-CAFOs that have 1000 or more AUs. These feedlots must be designed to totally contain runoff, and manure management planning requirements are more stringent than for smaller feedlots. CAFOs are inspected by the MPCA in accordance with the MPCA NPDES Compliance Monitoring Strategy approved by the EPA. All CAFOs (NPDES permitted, SDS permitted and not required to be permitted) are inspected by the MPCA on a routine basis with an appropriate mix of field inspections, off-site monitoring and compliance assistance." (Page 42 Missouri River Basin TMDL Report[7]).

The TMDL Report also includes the following statement "Incorporating manure is the preferred BMP for land application of manure and should result in less runoff losses. Because land application of manure is only part of the *E. coli* there was no attempt to quantify or distinguish between incorporated and non-incorporated manure in the TMDL, instead it was only described as "Manure."" (Page 27 Missouri River Basin TMDL Report[8]).

As noted earlier BIL will be incorporating all of their manure at the time of application via knife injection.

**Comment 6-5:** Environmental Working Group (EWG) conducted an analysis to determine the risk of excessive manure spreading on farm fields in the Little Sioux River Watershed. This analysis makes clear why livestock feedlots are responsible for 99% of *E. coli* contamination in the Little Sioux River. In its analysis, EWG identified 211 crop fields in a three mile radius surrounding the BIL Facility that could be available for manure spreading. These fields, however, are very likely already being used to spread manure from dozens of other nearby animal feeding operations. To conduct its assessment, EWG used the number of existing animal feeding operations within three miles of a crop field as an indicator of the potential use of a field for manure spreading and as an indicator of the "pressure" on the field to accept manure from several operations. EWG's analysis shows that each of the 211 crop fields in the area is

[6] https://www.pca.state.mn.us/sites/default/files/wq-iw7-44e.pdf
[7] Ibid.
[8] Ibid.

surrounded by between 4 to 18 existing feedlot facilities. This indicates that fields in the Little Sioux River Watershed are under substantial pressure to accept huge quantities amounts of manure from nearby feedlot operations.

Twenty-two percent of the fields (46 fields) within three miles of the BIL Facility area already surrounded by more than 15 existing animal feeding operations. Fifty percent (105 fields_ are surrounded by between 10 and 14 existing operations, and 28 percent (60 fields) by between 4 and 9 existing operations. All of the operations surrounding this cluster of 211 farm fields around the BIL Facility are competing to spread manure on the same fields, or, alternatively, could already be excessively spreading manure on the same fields and drastically increasing the risk of E. coli contaminated runoff to the Little Sioux River and its tributaries. The high *E. coli* levels in the Little Sioux River present strong evidence that the latter over-application scenario may be occurring.

**Response:** See response to comment 6-4. Also, the analysis done by EWG and provided as a comment by MCEA fails to take into consideration several important factors that determine the amount of pressure or competition being applied to the cropland in the area. 1) the number and type of the animal at each feedlot, 2) the available acreage of each field, 3) the ability of livestock producers to effectively move manure greater than 3 miles, 4) that there is additional cropland available for those feedlots on the fringe of the study area outside the study area. Without that additional information, the study completed by EWG does not support the conclusion that there is over application of manure in the Little Sioux River watershed.

**Comment 6-6:** To fully understand the environmental and public health threat from fecal waste in the Little Sioux River, the Agency must review the manure management plans for each of the feedlots surrounding the BIL Facility and clearly identify fields receiving manure. Based on this information, the Agency must then use its permitting authority to ensure that application is not occurring in a manner that contributes to the *E. coli* impairment in the Little Sioux River. This could happen, for example, if manure is being applied in unsafe amounts or in high-risk locations near the Little Sioux River or its tributaries. To protect the Little Sioux River and public health, the Agency must require facilities to implement best management practices in manure management plans that address the unique threat of *E. coli* contaminated runoff. MCEA requests that the agency conduct this required additional analysis through an EIS and immediately begin an individual permit process for the BIL Facility.

**Response:** The Commissioner of the MPCA will make the determination on the need for an EIS after carefully reviewing all the information in the EAW, written public comments, all additional field investigation results, and the Response to Comments. Upon reviewing all of the available information, the Commissioner determines if the Project has a potential for significant environmental effects following the criteria specified in Minn. R. 4410.1700 subp. 7. The Commissioner issues a Findings of Fact, Conclusions of Law, and Order to support either a positive declaration on the need for an EIS, or a negative declaration on the need for an EIS.

**Comment 6-7:** Continued coverage under Minnesota's General Feedlot Permit is not appropriate given the BIL Facility's reasonable potential to cause or contribute to the *E. coli* impairment in the Little Sioux River and the need for site-specific best management practices to address this unique pollution threat.

**Response:** The MPCA has reviewed the Proposer's application for permit coverage under the NPDES General Feedlot Permit. The MPCA determined that the Proposer's application, manure management plan and liquid manure storage area design plans and construction specifications, if constructed and designed as proposed, will meet the requirements for NPDES General Feedlot Permit coverage and Minn. R. ch. 7020.