NORTH CAROLINA

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

FRANCIS X DELUCA, Plaintiff	)	
v.	)	COMPLAINT
ROY COOPER, in his capacity as ATTORNEY GENERAL OF NORTH CAROLINA Defendant.	)	

Plaintiff, complaining of the Defendant, allege and say:

1. Francis X DeLuca is a citizen and resident of Wake County, North Carolina. He had paid and pays state and local taxes, including income tax and sales tax, each of which is used to support the public schools of North Carolina.

2. Plaintiff Francis X Deluca has standing as a taxpayer to prevent a diversion of funds which are committed by the Constitution to the public schools of North Carolina. Goldston v. State, 361 NC 26, 637 S.E.2d 876 (2006).

3. By Agreement dated July 25, 2000, Michael Easley, then the Attorney General of North Carolina, entered into an agreement with Smithfield Foods Inc. and its subsidiaries, Brown's of Carolina, Inc., Carroll's Foods Inc., Murphy Farms Inc., Carroll's Foods of Virginia, Inc. and Quarter M Farms Inc. An unsigned copy of the Agreement is attached hereto as exhibit A.

4. Pursuant to that agreement, Smithfield Foods, Inc. and its subsidiaries agreed to pay North Carolina and deliver to the Attorney General of North Carolina up to $2 million per year based upon the number of hogs they produced. On information and belief, in the years embraced within the prayer for relief that payment in 2014 was $1.9 million; in 2015 the amount was $1.8 million; in 2016 the amount was $2.0 million.

5. Pursuant to the Agreement the Attorney General has distributed these sums to grant recipients for Supplemental Environmental Programs (SEP). These funds have been so distributed since inception of the Agreement and as recently as August 2016.

6. In North Carolina School Board Association et al vs. Moore 359 NC474, 614

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SE 2nd 504 (2005) the North Carolina Supreme Court held that monies paid for these Supplemental Environmental Programs (SEP) were subject to article IX section 7 of the Constitution and must go to the Civil Penalty and Forfeiture fund in accordance with article IX section 7 and GS 115 C – 457.2. In that same case the Supreme Court left intact the holding of the Court of Appeals that the applicable statute of limitations was three years under GS 1-52.

7. The current Attorney General, Defendant Roy Cooper, was a named party in the case described in paragraph 6 and had actual knowledge of its holding.

8. Plaintiffs demand that the Attorney General, Defendant Roy Cooper, recover from grant recipients the funds distributed in 2014, 2015 and 2016 by him to the grant recipients within the three years next preceding the filing of this complaint.

9. On information and belief, the settlement with Smithfield Foods Inc. and its subsidiaries was preceded by actual violations of law by Smithfield Foods, Inc. and its subsidiaries of which the State had knowledge.

10. By this litigation the Plaintiff will have created a common fund for the benefit of the taxpayers and 115 LEA's and the public charter schools will have prevented the diversion of an estimated $18 million over the course of the next nine years.

Plaintiffs pray for relief as follows:

1. That the Attorney General be preliminarily and permanently enjoined from distributing payments made pursuant to the July 25, 2000 Agreement to anyone other than to the Civil Penalty and Forfeiture Fund.

2. That the Attorney General be preliminarily and permanently enjoined by mandatory injunction to recover the funds previously distributed by him for Supplemental Environmental Programs within the three years next preceding the filing of this complaint.

3. That from the common fund so recovered that the Plaintiffs be allowed their attorney fees and costs.

4. That the costs of this action be taxed to the Defendant, and

5. Such other and further relief as to the Court may seem just and proper.

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STAM LAW FIRM, PLLC

By: _____

Paul Stam, Attorney for Plaintiffs
510 W. Williams Street
Apex, NC 27502
Tel: 919-362-8873
Fax: 919-387-7329
Email: paulstam@stamlawfirm.com

Documents: Deluca, Francis X Complaint

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AGREEMENT

This AGREEMENT is made this 25th day of July, 2000, by and between the ATTORNEY GENERAL OF NORTH CAROLINA; SMITHFIELD FOODS, INC.; BROWN'S OF CAROLINA, INC.; CARROLL'S FOODS, INC.; MURPHY FARMS, INC.; CARROLL'S FOODS OF VIRGINIA, INC.; AND QUARTER M FARMS, INC.

WHEREAS, Brown's of Carolina, Inc.; Carroll's Foods, Inc.; Murphy Farms, Inc.; Carroll's Foods of Virginia, Inc.; and Quarter M Farms, Inc. (collectively, the "Subsidiaries") are subsidiaries of Smithfield Foods, Inc. ("Smithfield") (collectively, the "Companies"). The Subsidiaries are North Carolina corporations engaged in raising hogs on farms they individually own and operate. The Subsidiaries also contract individually with independent farmers to raise their hogs. Smithfield owns all of the outstanding stock of the Subsidiaries, but does not itself raise any hogs in North Carolina.

WHEREAS, the Attorney General is acting pursuant to his authority under Chapter 114 of the General Statutes and enters into this Agreement after consulting with the North Carolina Department of Environment and Natural Resources ("DENR").

WHEREAS, hog production and a clean and safe environment are important to the farming community and economy of North Carolina.

WHEREAS, the current anaerobic lagoon and sprayfield system for swine waste management employed by the Subsidiaries and other hog producers in North Carolina is currently authorized and permitted under State law and the Companies believe it is currently the best available technology for swine waste management; however, the Attorney General has concluded that the public interest will be served by the development and implementation of environmentally superior swine waste management technologies appropriate to each category of hog farms in North Carolina.

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PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
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WHEREAS, the Companies are in a leadership position to provide the financial and technical resources needed to develop Environmentally Superior Technologies for the management of swine waste in North Carolina because, together, the Subsidiaries are the largest pork producers in the State under common ownership. Accordingly, the Companies have agreed to lead the development and implementation of environmentally superior swine waste management technologies in North Carolina.

WHEREAS, the Companies are committed to working cooperatively with the Attorney General to develop and implement Environmentally Superior Technologies in consideration of the Attorney General's commitment to use the full power and authority of his office to diligently pursue expeditious implementation of Environmentally Superior Technologies appropriate to each category of hog farm requiring permits under North Carolina law, regardless of ownership or operational control of the farms.

WHEREAS, the Attorney General and the Companies agree that pending development and implementation of Environmentally Superior Technologies, the Companies should undertake a series of environmental initiatives intended to preserve and enhance water quality in eastern North Carolina.

WHEREAS, the Companies have entered into this binding Agreement freely for the purpose of memorializing the commitments they have voluntarily agreed to undertake in consideration of the Attorney General's actions.

NOW, THEREFORE, the Attorney General and the Companies agree as follows:

I. SUMMARY OF COMMITMENTS BY THE COMPANIES

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Subject to the terms of this Agreement, and in consideration of the Attorney General's commitments herein, the Companies agree to: (1) undertake immediate measures for enhanced environmental protection on Company-owned Farms and provide assistance to Contract Farmers in undertaking these same measures; (2) commit $15 million for the development of Environmentally Superior Technologies for the management of swine waste and to facilitate the development, testing, and evaluation of potential technologies on Company-owned Farms; (3) install Environmentally Superior Technologies on each Company-owned Farm in North Carolina and provide financial and technical assistance to Contract Farmers for the installation of these technologies; (4) commit $ 50 million to environmental enhancement activities; (5) cooperate fully with the Attorney General to ensure compliance with applicable laws, regulations, policies and standards; and (6) in cooperation with the Attorney General and all other interested parties, take a leadership role in enhancing the effectiveness of the Albemarle-Pamlico National Estuary Program; all as set out below.

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II. DEFINITIONS

A. Company-owned Farms. Any farm or farms in North Carolina owned or operated by one of the Companies.

B. Contract Farms or Farmers. Any farm or farms in North Carolina owned or operated by an independent farmer under contract with one of the Subsidiaries for the production of hogs.

C. Environmentally Superior Technology or Technologies. Any technology, or combination of technologies that (1) is permittable by the appropriate

governmental authority; (2) is determined to be technically, operationally, and economically feasible for an identified category or categories of farms as described in Section III. B.; and (3) meets the following performance standards:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;

2. Substantially eliminate atmospheric emissions of ammonia;

3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;

4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens; and

5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

D. Technology Determination. A written determination pursuant to Section III.B. of this Agreement which contains (1) a finding that a technology or combination of technologies is an Environmentally Superior Technology or Technologies; (2) an identification of the category or categories of farms covered by the determination; (3) a determination (made in consultation with DENR) that the technology or technologies are capable of being permitted by DENR and any other appropriate governmental authority; and (4) a schedule for implementation of the Environmentally Superior Technology or Technologies as soon as possible.

III. SUBSTANTIVE PROVISIONS

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A. IMMEDIATE MEASURES FOR ENHANCED ENVIRONMENTAL PROTECTION.

1. The Companies agree to submit to the Attorney General plans which provide for the following:

a. On or before November 15, 2000, a plan which identifies those Company-owned Farms with buildings or lagoons located in the 100 year flood plain on current maps, and a description (together with expeditious implementation schedules) of proposed measures to protect the waters of the State from the effects of flooding.

b. On or before October 15, 2000, a plan which identifies those Company-owned Farms that have the potential to adversely impact water quality due to deficient site conditions or operating practices and a description (together with expeditious implementation schedules) of proposed measures to correct such deficiencies or operating practices.

c. On or before January 15, 2001, a plan for identifying wetlands, and natural areas on Company-owned Farms that protect water quality, and a description (together with expeditious implementation schedules) of proposed measures to protect such areas, including conservation easements for such areas on Company-owned Farms.

d. On or before December 15, 2000, a plan which identifies all abandoned lagoons on Company-owned Farms and a description

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(together with expeditious implementation schedules) of proposed measures for closure of the lagoons on Company-owned Farms in accordance with current NRCS and DENR standards and consistent with DENR's most current priority list.

e. On or before September 15, 2000, a plan which provides for adoption of environmental management systems for Company-owned Farms sufficient to attest compliance with the ISO 14000 series of voluntary standards governing environmental management systems, including provisions for obtaining certification from an independent and accredited registrar. The plan will also include proposed implementation schedules for the Company-owned Farms.

2. The parties recognize that preparation and implementation of similar plans with respect to Contract Farms will require the consent and participation of the Contract Farmers as well as financial and technical assistance by the Companies. The Companies agree to provide such assistance to participating Contract Farmers as may be needed for the preparation and implementation of plans meeting the goals and objectives of paragraph 1 above with respect to Contract Farms.

3. The Attorney General will review the plans submitted pursuant to paragraph 1 above in consultation with DENR and any groups or individuals the Attorney General deems appropriate, and will approve or disapprove each plan in whole or in part within 60 days of submittal. In the event the Attorney General fails to either approve or disapprove a plan within 60 days of submittal, the plan will be deemed to be approved. If the

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Attorney General disapproves a plan or any portion of a plan, he will state the reasons for his disapproval and describe his proposed revisions. Within 30 days after receiving notice of disapproval from the Attorney General, the Companies will make the proposed revisions to the plan or notify the Attorney General that they disagree with the disapproval and invoke the dispute resolution provisions of Section IV.B. of this Agreement.

4. The Companies will implement plans submitted and approved pursuant to this Section III.A. in accordance with the approved schedules.

B. DEVELOPMENT OF ENVIRONMENTALLY SUPERIOR TECHNOLOGIES

1. The parties agree that the Chancellor of North Carolina State University ("NCSU") will designate an individual with appropriate expertise (hereinafter, the "Designee"), and that the Designee will be responsible for the identification and development of Environmentally Superior Technologies; will be the final authority in the selection, installation, operation, and evaluation of technology alternatives; and will make all Technology Determinations. The parties acknowledge that the Chancellor has designated Dr. C. M. Williams, Director of the NCSU Animal and Poultry Waste Management Center, to fill this role. If for any reason the Designee is unable or unwilling to exercise the authority and responsibility conferred upon him by this Agreement, the parties agree that his replacement will be selected by the Chancellor in consultation with the President of the University of North Carolina System, the Attorney General and the Companies. The Companies hereby release the Designee from any and all liabilities associated with the performance of the responsibilities conferred upon him by and within the scope of the Agreement.

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2. The parties understand that in the course of exercising the authority and performing the responsibilities conferred upon him by this Agreement, the Designee will consult with and seek the advice of experts in animal waste management as well as those with an interest in the development of Environmentally Superior Technologies, including, but not limited to, DENR, environmental interests, swine industry representatives, agricultural interests, and technology suppliers and vendors. This process will include, without limitation, the appointment by the Designee of a peer review panel that will include representation by 1) experienced researcher(s) in the area of animal waste management, 2) experienced researcher(s) in the areas of environmental science and public health, 3) DENR, 4) environmental and community interests, 5) swine agribusiness interests, including a representative from one of the Companies, and 6) faculty from the University of North Carolina system with expertise in business management. This panel will include balanced representation from interested parties and will be chaired by the Designee. Each panel member may fully participate in the process and advise on the selection, installation, operation and evaluation of potential Environmentally Superior Technologies. However, final authority in the selection, installation, operation, and evaluation of technologies and all Technology Determinations will remain the sole responsibility of the Designee. The panel will hold semi-annual public meetings for the purpose of providing information about the progress of identifying and installing potential Environmentally Superior Technologies, data collected from each technology, economic analyses, identification of the Environmentally Superior Technologies, and the progress of implementation.

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3. If requested by the Designee, the Companies agree to make available Company-owned Farms to facilitate the development, testing, and evaluation of potential technologies. With the consent of a Contract Farmer, the Designee may also site technologies on a Contract Farm. The Companies recognize that the Designee intends to select five technologies for installation beginning immediately, with an additional five to six technologies within six months of the Agreement, and additional or modified technologies thereafter as appropriate.

4. Determination of economic feasibility.

a. The parties understand and agree that the Designee will conduct an economic analysis to evaluate the economic feasibility of alternative technologies and their application to different categories of farms. In evaluating the economic feasibility of alternative technologies, the Designee will seek the advice of experts in economics, and to that end will appoint and consult with a peer review panel that may include, without limitation, representation by economists representing 1) academia; 2) environmental interests; 3) government; and 4) the swine industry, including a representative of one of the Companies.

b. In determining whether it is economically feasible to construct and operate a particular alternative technology for a category of farms, the Designee will consider all relevant information including, but not limited to, the following factors:

(i) the projected 10-year annualized cost (including capital, operation and maintenance costs) of each alternative

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technology expressed as a cost per 1000 pounds of steady state live weight for each category of farm system;

(ii) the projected 10-year annualized cost (including capital, operation and maintenance costs) per 1000 pounds of steady state live weight for each category of farm system of a lagoon and sprayfield system that is designed, constructed and operated in accordance with current laws, regulations, and standards, including NRCS design, construction and waste utilization standards;

(iii) projected revenues, including income from waste treatment byproduct utilization, together with any cost savings from the new technology;

(iv) available cost-share monies or other financial or technical assistance from federal, state or other public sources, including tax incentives or credits; and

(v) the impact that the adoption of alternative technologies may have on the competitiveness of the North Carolina pork industry as compared to the pork industry in other states.

c. The parties understand and agree that alternative technologies that cost more than the lagoon and sprayfield system may be determined to be economically feasible.

d. The Companies agree to make available all documents and other information the Designee reasonably determines to be required for the economic analysis. To the extent that documents submitted pursuant to this subsection are public records under North Carolina law, the provisions and procedures in Section III. E. of this

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Agreement regarding confidentiality of documents will be followed by the Companies and the Designee.

5. The parties acknowledge that as soon as practical, but in any event within two years of the effective date of this Agreement, the Designee will issue a written report containing a complete description of his activities and findings related to the development of Environmentally Superior Technologies and will issue a Technology Determination for each category of farms for which such determination is then possible. For purposes of this Agreement, the categories may be determined based on farm size, geographic location, the geographic concentration of the hog population, the type of farm, and any other factors the Designee deems appropriate. The Designee may issue additional reports and Technology Determinations as appropriate.

6. The parties understand and agree that the development and implementation of Environmentally Superior Technologies within the time frames contemplated by this Agreement will require that the Designee expand, intensify, and accelerate activities related to the identification, development, selection, installation, operation, and evaluation of alternatives to the existing anaerobic swine waste lagoon and sprayfield system on farms selected for testing of potential Environmentally Superior Technologies. The Companies hereby commit $15 million to ensure that the Designee has the financial resources needed to meet this objective, with payments to be made as follows:

   a. From time to time, the Designee will generate invoices or other forms of communication reflecting the need for payment, and

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receive invoices from others, for all costs and expenses incurred by him or at his direction reasonably related to the activities described in paragraph 6 above, including the expenses of convening peer review panels and premiums for liability insurance, workers compensation or other insurance coverage reasonably required for the performance of the responsibilities set out in this Agreement.

b. A representative of the Attorney General's Office, designated by the Attorney General, will promptly review all invoices received from the Designee, and will approve, and forward to Smithfield for payment all invoices for costs and expenses reasonably related to the activities described in paragraph 6 above.

c. Smithfield agrees to pay all invoices approved for payment by the Attorney General within 30 days of receipt. The total of such payments will not exceed $15 million without the agreement of the parties.

C. IMPLEMENTATION OF ENVIRONMENTALLY SUPERIOR TECHNOLOGIES

1. Within 18 months of the effective date of this Agreement, the Companies will prioritize their Company-owned Farms for conversion to Environmentally Superior Technologies based on appropriate environmental, engineering and operational factors, and submit their priority lists to the Attorney General for review and approval. The Attorney General will approve or disapprove the priority lists within 60 days of submittal. In the event that the Attorney General fails to either

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approve or disapprove a list within 60 days of the submittal, the list will be deemed to be approved. Such review and approval will be done in consultation with DENR and any groups or individuals the Attorney General deems appropriate. If the Attorney General disapproves a priority list, he will state the reasons for his disapproval and describe his proposed revisions. Within 30 days after receiving notice of disapproval from the Attorney General, the Companies will make the proposed revisions to the priority list or notify the Attorney General that they disagree with the disapproval and invoke the dispute resolution provision of Section IV.B. of this Agreement.

2. In consideration of the Attorney General's Commitments herein, the Companies agree to convert all Company-owned Farms, in the farm category or categories specified in the Technology Determination, to the Environmentally Superior Technology or Technologies identified in the Technology Determination as soon as possible, but in any event within three years of receiving written notice of a Technology Determination and in accordance with the approved lists of priorities established pursuant to paragraph 1 above.

3. The Companies acknowledge the importance of independent Contract Farms to the success of the Companies' vertical integration operations and they reaffirm their intention to continue their relationship with those farms under contract with the Subsidiaries. To that end, the Companies will provide the financial and technical assistance to their Contract Farmers necessary to facilitate the conversion to Environmentally Superior Technologies within the time frames described in this Agreement.

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4. Implementation will include the installation and operation of monitoring equipment and procedures needed to ensure compliance with applicable environmental standards, in accordance with the applicable permit conditions.

D. ENVIRONMENTAL ENHANCEMENT

The Companies agree to pay each year for 25 years an amount equal to one dollar for each hog in which the Companies (including, for such purpose, any successor-in-interest of any of the Companies, by merger, sale of stock or assets or otherwise) have had any financial interest in North Carolina during the previous year, provided, however, that such amount shall not exceed $2 million in any year. For purposes of this paragraph, the Companies have a financial interest in any hog that, inter alia, they (or their nonparty subsidiaries or affiliates) raise, produce, contract for, own or slaughter. The first payment will be made within 30 days of the effective date of this Agreement, with subsequent payments to be made each year thereafter on or before the anniversary date of this Agreement. The funds will be paid to such organizations or trusts as the Attorney General will designate. The funds will be used to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate. Portions of the funds, not to exceed a total of $2 million dollars, may also be designated as grants to the State to defray the costs incurred by the State as a result of this Agreement, including permitting and compliance assurance, in the discretion of the Attorney General. In making the determinations set out in this paragraph, the Attorney General will consult with the Companies, DENR, and any other groups or individuals he deems appropriate and may appoint any

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advisory committees he deems appropriate.

E. COMPLIANCE ASSURANCE

The Companies acknowledge that the Attorney General, in consultation with DENR, will undertake a comprehensive review of the operation of the swine industry in North Carolina to ensure that the Companies and other integrators and operators of swine facilities are taking all appropriate steps, and have adopted compliance assurance systems, to ensure that they remain at all times in compliance with the law. The Companies agree to make available all documents which the Attorney General may request and to make available at the request of the Attorney General any employees of the Companies to be interviewed, in the course of this review. In the event the Companies seek to assert a claim of confidentiality pursuant to Chapter 132 of the North Carolina General Statutes as to any document requested by the Attorney General, they will so designate or indicate on the document at the time it is submitted. If the Attorney General receives a public records request for any document designated as confidential, the Attorney General will notify the Company that submitted the document of the request. It will be the responsibility of the Companies to present any arguments to the party seeking the disclosure or the Superior Court as to why disclosure should not be allowed. Nothing in this paragraph will be deemed a waiver of the attorney-client privilege or attorney work product doctrine.

F. ENHANCEMENT OF THE ALBEMARLE-PAMLICO NATIONAL ESTUARY PROGRAM

The Companies will assume a leadership role and involve all interested parties for the purpose of identifying and implementing those measures needed to strengthen

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the Albemarle-Pamlico National Estuary Program. The Companies agree to work with the Attorney General and other appropriate federal, state, local authorities, environmental interests, and private sector representatives to develop enhancements to the Albemarle-Pamlico National Estuary Program to make it more effective. One of the principal goals of this initiative will be to seek the establishment of a regional National Estuary Program Office in eastern North Carolina to serve as a permanent resource to improve water quality. The Companies also commit to actively support and lobby for any federal and state legislation needed to implement the recommended enhancements.

IV. GENERAL PROVISIONS

A. *FORCE MAJEURE*

Force Majeure means any event arising from causes beyond the control and despite the best efforts of the Companies that delays or prevents the performance of any obligation under this Agreement. *Force Majeure* will include, without limitation:

1. Compliance with obligations required by this Agreement has been prohibited by any legislative, regulatory, federal, or other governmental action requiring the installation of a technology other than an Environmentally Superior Technology.

2. A Technology Determination which finds that the technology cannot be fully implemented within three years by the affected category or categories of farms, in which case the time for performance will be that set forth in the Technology Determination.

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3. Failure to receive a permit for the installation and operation of an Environmentally Superior Technology within 3 months after DENR or the appropriate regulatory authority receives a complete and thorough permit application, in which case the time for performance will be extended for a period to compensate for the delay in permit issuance.

4. The unavailability of labor, or delays in the delivery of plans, materials, parts or equipment from third parties.

5. Issuance of a permit by DENR with conditions or requirements which the Designee determines would have materially affected the finding of economic feasibility in the Technology Determination.

B. DISPUTE RESOLUTION

1. If a dispute arises under this Agreement, the following dispute resolution procedures will apply.

a. The Companies will notify the Attorney General in writing as soon as they believe a *Force Majeure* event or dispute regarding the provisions of this Agreement has occurred. For *Force Majeure* events, the notice will include a description of the efforts undertaken to overcome the *Force Majeure* event and an estimate of the additional time required for that purpose. The Attorney General will notify the Companies whether he agrees that a *Force Majeure* event has occurred and whether he agrees to the additional time requested by the Companies. If the parties cannot resolve the

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dispute or agree on the occurrence of a *Force Majeure* event or the additional time necessary, the parties agree to engage in mediation for a period not to exceed thirty (30) days in an effort to resolve the dispute.

b. If the parties are unable to resolve the dispute, they will jointly submit the matter to the Superior Court of Wake County within five (5) days of the end of the mediation, and jointly request an expeditious resolution. It is understood that, in this proceeding before the Superior Court, either party may petition the Court for specific performance of this Agreement. The parties acknowledge that the Court has jurisdiction to interpret this Agreement and to order compliance with the terms of the Agreement, and that specific performance is the appropriate remedy for failure to so comply. Should the matter ultimately involve a petition to stay to the appellate division, no bond will be requested or required.

C. TERMINATION

The Agreement will terminate upon completion of all commitments and obligations provided for herein.

D. GOVERNING LAW

The provisions of this Agreement and all duties, obligations, and rights arising from it are governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction)

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that would cause the application of this agreement of the laws of any jurisdiction other than the State of North Carolina.

E. SEVERABILITY

Should any portion of this Agreement fail, the remainder of this Agreement will not be affected, impaired or invalidated so long as the Attorney General fulfills his commitments under this Agreement.

F. ENFORCEABILITY

This Agreement is enforceable only by the parties hereto.

G. NOTICES

When written notification or communication is required by the terms of this Agreement, such notification or communication will be addressed to the following individuals at the addresses specified below (or to such other individuals and addresses as may be designated by written notice to the parties).

As to the Attorney General:

Daniel C. Oakley
Senior Deputy Attorney General
Post Office Box 629
Raleigh, NC 27602-0629.

As to the Companies:

Michael H. Cole
Associate General Counsel and Secretary
Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430

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H. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties with respect to the transactions contemplated in this Agreement and supersedes all prior discussions, understandings, agreements and negotiations among the parties to this Agreement.

V. ATTORNEY GENERAL COMMITMENTS

Subject to the terms of this Agreement and in consideration of the commitments by the Companies herein, the Attorney General agrees:

A. To use the full power and authority of his office to diligently pursue expeditious implementation of Environmentally Superior Technologies on farms in a category or categories identified in a Technology Determination and that are required to have individual or general permits under North Carolina law, regardless of ownership or operational control of the farms.

B. To use his influence to expedite the permitting process; and

C. Not to undertake any actions in conflict with this Agreement.

VI. RESERVATION OF RIGHTS

A. Nothing in this Agreement shall be construed as an admission of liability on the part of the

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Companies with respect to the operation of the present waste management systems on the Company-owned Farms or Contract Farms.

B. Nothing in this Agreement shall be construed as an admission that the Companies are engaging or have engaged in activities which harm or have harmed public health or the environment.

C. Nothing in this Agreement shall be construed to in any way limit State or private enforcement against the Companies for past, present, or future violations of law, including, but not limited to, State or Federal statutes, regulations, or rules, nor to create new private enforcement rights. This Agreement shall not be construed as a settlement of any liability of the Companies for penalties, fines, damages or other liability.

D. Nothing in this Agreement shall relieve the Companies of their responsibility to comply with applicable law, including, but not limited to, State and Federal environmental laws, rules, and regulations.

E. Nothing in this Agreement shall limit the ability of DENR or any other governmental agency from adopting rules or policies pursuant to their statutory authority.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

MICHAEL F. EASLEY

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Attorney General of North Carolina

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SMITHFIELD FOODS, INC.

By:_____(SEAL)

Title:_____

BROWN'S OF CAROLINA, INC.

By:_____(SEAL)

Title:_____

CARROLL'S FOODS, INC.

By:_____(SEAL)

Title:_____

MURPHY FARMS, INC.

By:_____(SEAL)

Title:_____

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CARROLL'S FOODS OF VIRGINIA, INC.

By:_____(SEAL)

Title:_____

QUARTER M FARMS, INC.

By:_____(SEAL)

Title:_____

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Article IX

Sec. 7. County school fund; State fund for certain moneys.

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

Sec. 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other

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http://www.ncdoj.gov/getdoc/c7588fb1-c970-4415-9d80-2dd0d62139eb/2-0-4-2-Environmental-Grants.aspx

To maximize the benefits to North Carolina's environment, the Attorney General, after consultation with Smithfield, the NC Department of Environment and Natural Resources and others, established the Environmental Enhancement Grants Program in January 2003.

http://www.ncdoj.gov/Top-Issues/Improving-the-Environment/Environmental-Grants/Grant-Recipients.aspx

HTTP://WWW.NCDOJ.GOV/GETDOC/92253347-71B0-458D-A055-6398DC6138EF/$1-9-MILLION-AWARDED-TO-PROJECTS-FOR-CONSERVATION.ASPX

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$1.9 MILLION AWARDED TO PROJECTS FOR CONSERVATION AND ENHANCEMENT OF WATER QUALITY AND NATURAL HABITAT IN NC

Release date: 8/20/2014

Environmental Enhancement Grant (EEG) Program facilitates Smithfield Agreement funding

Raleigh: Attorney General Roy Cooper announced this week the recipients of the twelfth cycle of Environmental Enhancement Grants. $1.9 million in funding, made available by the Smithfield Agreement, will be used to protect and enhance North Carolina's environment and natural resources from the Blue Ridge Mountains to the Pamlico Sound.

The Attorney General's agreement with Smithfield Foods, the world's largest pork producer, provides annual funding for projects throughout the state to restore, enhance or protect North Carolina's environment and natural resources. In addition to providing annual funding for environmental projects, Smithfield has funded research at N.C. State University to develop and evaluate environmentally superior alternatives to currently permitted swine waste management technologies.

To date, Cooper has awarded more than $23 million to 92 environmental enhancement projects pursuant to the Smithfield Agreement. Funds from the agreement have been used to close 223 animal waste lagoons, restore and protect more than 20,700 acres of natural areas and wildlife habitat, and support a variety of environmental education and research initiatives.

The following projects were selected to address surface water quality and conservation issues throughout the state:

Durham Soil & Water Conservation District was awarded $325,000 to install stormwater reduction and treatment measures on the campus of Southern High School. The measures will provide educational opportunities for students and reduce nutrient levels in water entering the Falls Lake watershed, a drinking water source for much of Wake County.

NC Foundation for Soil & Water Conservation will receive $280,000 to close high priority inactive animal waste lagoons, install and rehabilitate on-farm water resource systems, and provide technical training to local soil and water conservation district staff throughout the state.

NC Coastal Federation was awarded $230,000 to eliminate seepage of agricultural drainage into a canal system feeding Long Shoal River, Alligator River and the Pamlico Sound. The installation of water control measures will reduce flooding and improve local water quality with the ultimate goal of restoring area waters for shell fish harvesting.

Pamlico Tar River Foundation will receive $129,309 to install and restore wetlands to treat and reduce stormwater runoff on the campus of Edgecombe Community College. The project will improve surface water quality in the Tar-Pamlico River Basin and provide educational opportunities for students and members of the community.

Tar River Land Conservancy was awarded $325,000 to purchase and protect a total of 410 acres in Halifax, Warren, and Franklin Counties. These acquisitions will permanently protect 5.4 miles of streams, 128 acres of wetlands, 144 acres within 100-year floodplains, and 362 acres of forest.

Blue Ridge Forever has been awarded $250,000 to acquire and protect 3,082 acres in Ashe, Buncombe, Burke, Henderson, Macon, and Madison counties. The acquisitions will protect riparian buffers along more than 20 miles of streams and rivers in the French Broad, Little Tennessee, New, and Catawba Watersheds.

NC Coastal Land Trust has been granted $225,000 to purchase a 50-acre tract along a tributary of Gales Creek in Carteret County. The property will be added to the Camp Sam Hatcher Preserve and managed as wildlife habitat and for passive recreation and education in partnership with the East Carolina Council of the Boy Scouts of America.

The Nature Conservancy has been granted $150,000 in order to purchase the 450-acre

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Heatherly Tract in Bladen County. Conservation of this tract will protect waters of the Cape Fear River basin and help create a permanently protected wildlife corridor between the Bladen lakes State Forest and State-managed game land.

The 2014 Environmental Enhancement Grant cycle is now open. Those interested have until October 27 to submit letters of intent. More information is available at http://www.ncdoj.gov/EEG.aspx .
Media Contact: Noelle Talley, (919) 716-6484

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http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/$1-8-million-awarded-to-NC-projects-to-protect-wat.aspx

$1.8 MILLION AWARDED TO NC PROJECTS TO PROTECT WATER QUALITY, CONSERVE NATURAL HABITAT, AG COOPER ANNOUNCES

Release date: 10/5/2015

Environmental Enhancement Grants fund projects from the mountains to the coast

Raleigh: $1.8 million in grants will go to projects intended to protect waterways, preserve wildlife, improve water quality, and help farmers with conservation and environmental management efforts, Attorney General Roy Cooper announced today.

"As North Carolinians, we are privileged to enjoy natural wonders from the mountains to the coast," Cooper said. "This funding will help preserve our environment and its resources for generations to come."

The grants are made possible by an agreement signed in 2000 between the North Carolina Attorney General's Office and Smithfield Foods, the world's largest pork producer. In the agreement, Smithfield committed to provide $50 million to improve North Carolina's environment. An additional $15 million was provided to North Carolina State University to fund the development of new technologies for processing and treatment of hog waste.

To date, Cooper has awarded more than $25 million to 100 recipients through the Environmental Enhancement Grants Program. Funds from the Smithfield Agreement have been used to close 231 animal waste lagoons, restore and protect 23,137 acres of natural areas and wildlife habitat, and support a variety of environmental education and research initiatives.

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2014 Environmental Enhancement Grant Recipients

Durham Soil & Water Conservation District was awarded $435,000 to improve water quality in the Falls Lake and Neuse River watersheds by continuing its work on the Southern High School campus in Durham. The District will install a variety of stormwater treatment and reduction measures to reduce nutrient input to Falls Lake, a significant drinking-water source for much of Wake County.

NC Foundation for Soil & Water Conservation will receive $333,500 to preserve on-farm natural resources and protect water quality through a variety of initiatives including the closing of eight inactive animal waste lagoons and installation of four on-farm water conservation measures. The Foundation will also provide training to local soil and water conservation district staff, enabling them to assist local farmers with designing and implementing conservation practices.

NC Coastal Federation was awarded $203,717 to install measures to reduce stormwater runoff in Bradley and Hewletts Creeks within the White Oak River Basin. The Federation will also refine and promote a stormwater permitting tool for more efficient stormwater prevention and reduction designs.

Southern Appalachian Highlands Conservancy will receive $225,000 to protect 1,245 acres in the New, French Broad, Catawba, and Little Tennessee River watersheds. The project will cover more than 13 miles of streams and rivers and will restore 1,000 feet of river banks and buffers.

Tar River Land Conservancy was awarded $225,000 to purchase 162 acres on Ledge and Holman Creeks adjoining 220 acres already under conservation. The tracts include 2.6 miles of streams, 149 acres of forest, and 21 acres within the 100-year floodplains.

The Conservation Fund has been awarded $150,000 to acquire up to 125 acres as part of its Protection of the French Broad Headwaters project. The acquisition will improve public access and reduce pollution in the French Broad River.

Piedmont Land Conservancy has been granted $110,000 to acquire a 13.88 acre Significant Natural Heritage Site on the Deep River in Randolph County. The Conservancy plans to transfer the property to the Town of Franklinville to be managed as a public nature preserve.

The Land Trust for Central NC has been granted $120,000 to purchase 56 acres on the

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Uwharrie River in Montgomery County, adjacent to the Uwharrie National Forest. The property will be managed for biodiversity protection, wildlife habitat, education and recreation.

The Attorney General's Office will soon begin accepting applications for the next cycle of Environmental Enhancement Grants. Those interested in applying should submit letters of intent by Monday, November 2, 2015. Completed proposals will be due by Friday, December 11, 2015. For more information, visit ncdoj.gov.

Contact: Noelle Talley
Phone: 919/716-6413

HTTP://WWW.NCDOJ.GOV/NEWS-AND-ALERTS/NEWS-RELEASES-AND-ADVISORIES/PRESS-RELEASES/$2-MILLION-AWARDED-TO-NC-PROJECTS-TO-PRESERVE-WATE.ASPX

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$2 MILLION AWARDED TO NC PROJECTS TO PRESERVE WATERWAYS, SUPPORT ENVIRONMENTAL RESEARCH, AG COOPER ANNOUNCES

Release date: 8/1/2016

Environmental Enhancement Grants fund projects across North Carolina

Raleigh: $2 million in grants will go to projects intended to conserve waterways, protect wildlife, improve water quality, and develop new conservation and environmental management efforts, Attorney General Roy Cooper announced today.

"Natural wonders from the mountains to the coast are part of North Carolina's legacy," Cooper said. "These grants will help preserve our state's environment for generations to come."

The grants are made possible by an agreement signed in 2000 between the North Carolina Attorney General's Office and Smithfield Foods, the world's largest pork producer. In the agreement, Smithfield committed to provide $50 million to improve North Carolina's environment. An additional $15 million was provided to North Carolina State University to

fund the development of new technologies for processing and treatment of hog waste.

To date, Cooper has awarded more than $27 million to more than 100 recipients through the Environmental Enhancement Grants Program. Funds from the Smithfield Agreement have been used to close 231 animal waste lagoons, restore and protect 23,137 acres of natural areas and wildlife habitat, and support a variety of environmental education and research initiatives.

2015 Environmental Enhancement Grant Recipients

The Town of Wake Forest will receive $193,650 to improve water quality and aquatic habitat in the Neuse River Basin by removing a failing earthen dam, stabilizing the stream bank and restoring natural vegetation on Smith Creek.

NC Coastal Federation was awarded $195,361 to purchase a 24.8-acre section of the 141-acre Schneider Farm on the White Oak River in Swansboro. This acquisition is a component of the Onslow Bight Conservation Forum, a broad partnership that promotes conservation of natural corridors and enhancement of biological diversity throughout the Onslow Bight Landscape.

Piedmont Conservation Council will receive $270,000 to help acquire a portion of the former Boling Chair Company property along a tributary of Loves Creek in downtown Siler City. The Council will restore the natural floodplain on the property, improving water quality in the Loves Creek watershed.

East Carolina University was awarded $110,209.00 to develop and implement comprehensive stream stabilization, water quality monitoring, and outreach plan to augment the restoration of Town Creek, an urban stream in downtown Greenville, NC.

North Carolina State University will receive $37,000 to evaluate best practices for managing stormwater on agricultural fields. NCSU will use resulting data to develop a fact sheet on environmental management for farmers to reduce pollution near Millstone Creek and the Cape Fear River.

Carolina Land and Lakes Resource Conservation & Development was awarded $32,000 to improve stormwater wetlands at the Rocky Face Mountain Recreational Area in Alexander County. The project will result in the removal of sediment, nutrients, metals and petroleum products before the stormwater runoff reaches the Rocky Face Branch watershed.

The Nature Conservancy will receive $150,000 to purchase and protect 300 acres of land and old-growth cypress swamp forest along the Black River in Bladen County. This project

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will protect the river, its water quality, swamp forests and aquatic wildlife habitats by preventing development along the river.

NC Coastal Land Trust was awarded $425,000 to support the purchase of 3,000 acres along the Waccamaw River. The acquisition will preserve significant diverse wetland habitats, enhance local water quality, and protect and buffer special natural areas in the Lumber River Basin.

Tar River Land Conservancy will receive $338,000 to purchase the 260-acre Possumquarter track on Fishing and Possumquarter Creeks. The purchase will preserve 4.8 miles of streams and 151 acres of forested uplands while protecting nationally significant aquatic habitats and drinking water for local communities.

Ducks Unlimited, Inc. was awarded $250,000 to restore the wetland function to improve water quality in the Pasquotank and Tar-Pamlico River Basins. The project includes replacing water control structures, removing debris from existing canals, enhancing embankments and installing pump systems to ensure proper water management and wetland functions. These enhancements will improve habitat for waterfowl, shorebirds and neo-tropical migratory species.

The Attorney General's Office will begin accepting applications for the next cycle of Environmental Enhancement Grants this fall. For more information, visit ncdoj.gov.

Contact: Noelle Talley
Phone: 919/716-6413

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http://www.ncdoj.gov/getdoc/40ce62ee-d6f7-48d4-a933-86913e5a62e4/Smithfield-Agreement.aspx

AGREEMENT

This AGREEMENT is made this 25th day of July, 2000, by and between the ATTORNEY GENERAL OF NORTH CAROLINA; SMITHFIELD FOODS, INC.; BROWN'S OF CAROLINA, INC.; CARROLL'S FOODS, INC.; MURPHY FARMS, INC.; CARROLL'S

FOODS OF VIRGINIA, INC.; AND QUARTER M FARMS, INC.

D. ENVIRONMENTAL ENHANCEMENT

The Companies agree to pay each year for 25 years an amount equal to one dollar for each hog in which the Companies (including, for such purpose, any successorin-interest of any of the Companies, by merger, sale of stock or assets or otherwise) have had any financial interest in North Carolina during the previous year, provided, however, that such amount shall not exceed $2 million in any year. For purposes of this paragraph, the Companies have a financial interest in any hog that, inter alia, they (or their nonparty subsidiaries or affiliates) raise, produce, contract for, own or slaughter. The first payment will be made within 30 days of the effective date of this Agreement, with subsequent payments to be made each year thereafter on or before the anniversary date of this Agreement. The funds will be paid to such organizations or trusts as the Attorney General will designate. The funds will be used to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate. Portions of the funds, not to exceed a total of $2 million dollars, may also be designated as grants to the State to defray the costs incurred by the State as a result of this Agreement, including permitting and compliance assurance, in the discretion of the Attorney General. In making the determinations set out in this paragraph, the Attorney General will consult with the Companies, DENR, and any other groups or individuals he deems appropriate and may appoint any15 advisory committees he deems appropriate.

~ by JDN Aug 25 each yr

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http://infohouse.p2ric.org/ref/11/10596.htm

EASLEY ANNOUNCES LANDMARK AGREEMENT WITH LARGEST HOG PRODUCER TO REPLACE OPEN-AIR LAGOONS IN NORTH CAROLINA

N.C. STATE UNIVERSITY TAKES LEAD ROLE IN TECHNOLOGY DEVELOPMENT

FOR IMMEDIATE RELEASE

CONTACT: Cari Hepp (919) 716-6413
July 25, 2000

Flanked by representatives of statewide environmental groups, agricultural leaders, and North Carolina State University (NCSU) Chancellor Marye Anne Fox, Attorney General Mike Easley today announced a major agreement between his office and Smithfield Foods, Inc., that will set the stage for phasing out open-air hog lagoons and sprayfields in North Carolina. The agreement places NCSU, the leading agribusiness institution in the world, in the pivotal role of coordinating the development and identification of environmentally superior technology for waste disposal.

Easley and Smithfield Foods, Inc., and its subsidiaries, the largest hog producing and pork processing companies in the world, have agreed to a legally binding agreement to develop and implement new technology that will protect the environment and the economy. Under the terms of the agreement, the companies will be required to pay $15 million to NCSU for the development of new technologies and $50 million toward environmental improvements and compliance monitoring. Violations of the agreement will be enforceable through the courts.

"When we began negotiations on this late last year, the goal of phasing out lagoons seemed a nearly impossible task," said Easley. "But I am here today to tell you that we have found a solution that will take us one giant step forward. It is a solution that will protect the environment without sacrificing the farmer or the economy. Industry leaders have agreed to fund the development of new technology to replace current lagoon systems. More importantly, they have agreed to implement this technology on their farms immediately."

"The Smithfield companies have come forward and agreed to do the right thing. We intend to develop this technology together and have it become the national industry standard. I fully expect other companies will join in this effort."

The agreement announced today is between Easley and Smithfield Food, Inc. and its subsidiaries: Brown's of Carolina, Inc., Carroll's Foods, Inc., Murphy Family Farms, Inc., Carroll's Foods of Virginia, Inc., and Quarter M Farms, Inc. Smithfield's farms and its integrated farms represent approximately 70% of North Carolina's hog industry.

"We hope this will be just the first of many agreements between the state and the major players in the industry," said Easley. "We are talking with other companies. I hope to

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have similar agreements that will protect our environment, protect our economy and pave the way for phasing out lagoons and sprayfields across the entire State."

Easley and his staff began discussions with industry representatives and environmental leaders following the widespread problems that plagued the industry in the wake of Hurricane Floyd.

"It is clear that North Carolina needs a long term solution to this problem," Easley said. "Otherwise the viability of the industry is in jeopardy."

"After the hurricane, I contacted Smithfield and began talks. Since then, we have all been working hard to devise innovative and workable solutions that will protect and preserve North Carolina's environment and protect the long term interests of the farmers. This industry is an important cog in the State's economic machinery. This agreement aims to solve what some had seen as competing interests -- rural economic development and a clean and safe environment. It is proof that North Carolina can prosper while making sure that our air and water are clean."

"We do not have to choose between a clean environment and a healthy economy. We must have both and this agreement proves that we can have both."

The agreement includes a $15 million payment to NCSU by Smithfield and its subsidiaries to develop environmentally superior waste disposal technologies. Researchers at NCSU will lead the process of evaluating and developing new technologies for treating waste and determining their feasibility for the North Carolina hog industry. Once a technology is developed and identified as technically and environmentally sound by the university, the companies will be required to implement it. The agreement contemplates a research and development effort to begin immediately and not exceed two years. The conversion process will not exceed three years.

In addition, the agreement guarantees a $50 million payment by the companies to improve the environment. The companies will also identify company farms in floodplains and ensure that they are not at risk of flood, identify at-risk farms and remove the risk, identify wetlands and implement plans for their protection, identify and close abandoned lagoons, and adopt accredited environmental management systems. The companies have also agreed to play a leadership role in the comprehensive improvement of water quality in Eastern North Carolina.

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KEY ELEMENTS OF THE ATTORNEY GENERAL'S AGREEMENT

with Smithfield Foods, Inc., Brown's of Carolina, Inc., Carroll's Foods, Inc, Murphy Family Farms, Inc., Carroll's Foods of Virginia, Inc., and Quarter M Farms, Inc.

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DEVELOPING NEW TECHNOLOGIES FOR THE ENVIRONMENT AND THE ECONOMY

*** $15 MILLION FOR NEW TECHNOLOGY**

Companies will pay $15 million to North Carolina State University (NCSU) to develop new technologies to replace open air lagoon and sprayfield systems.

*** BEGIN TESTING NEW TECHNOLOGIES IMMEDIATELY**

Experts at NCSU will identify, develop and test environmentally superior technologies. Five full scale projects will begin immediately with more to follow within 6 months. Completion date: not to exceed 2 years.

*** IMPLEMENT NEW TECHNOLOGIES WITHIN 36 MONTHS OF DEVELOPMENT**

Once new technologies are identified, companies will convert their facilities and phase out the current lagoons and sprayfield systems.

*** PROVIDE TECHNICAL AND FINANCIAL ASSISTANCE TO FARMERS**

Smithfield will provide the technical and financial assistance needed for their contract farmers to convert to the new technology.

PROTECTING THE ENVIRONMENT

*** PAY $50 MILLION TO IMPROVE ENVIRONMENT**

Companies will pay $50 million to enhance the environment. (Examples include protecting wetlands and obtaining environmental easements.) Up to $2 million may be used to implement and monitor compliance with the agreement.

*** TAKE IMMEDIATE ACTION TO PROTECT THE ENVIRONMENT**

Under the Attorney General's oversight, companies will take the following steps:

* Identify farm lagoons and buildings in flood plains and draw up and implement steps to protect the waters of the state
* Identify "at-risk" (deficient site conditions or operating practices) facilities and draw up and implement plans to clean them up
* Identify wetlands and natural areas located on farms and draw up and implement plans to protect them
* Identify abandoned lagoons and draw up and implement plans to close them
* Adopt an accredited environmental management system for their facilities.

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*** COOPERATE WITH A.G.'S OFFICE TO ENSURE COMPLIANCE WITH ALL LAWS AND REGULATIONS**

*** TAKE LEADERSHIP ROLE IN ALBEMARLE-PAMLICO ESTUARY PROGRAM**

Companies will play a leadership role in enhancing effectiveness of Albemarle-Pamlico National Estuary Program and help establish a permanent program to protect water quality in Eastern North Carolina.

EFFECT OF AGREEMENT

The agreement is a legally binding contract. Violations of the agreement are enforceable through the courts.

The Attorney General will seek similar agreements with other hog companies.

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The News & Observer

July 26, 2000

Hog-waste accord reached

By Lynn Bonner; STAFF WRITER

State Attorney General Mike Easley and officials with Smithfield Foods, the state's largest hog producer, announced an agreement Tuesday that calls for the phasing out of the hog lagoons on company-owned farms and provides $65 million to research alternatives and to clean up the environment.

"The bottom line is, we don't have to choose between a strong economy and a clean environment," said Easley at a news conference. "Not only can we have both, but we must have both. We all recognize that - Smithfield recognizes it, we recognize it, and this agreement will ensure it."

Easley, the Democratic candidate for governor, said the legal agreement is the result of talks between his office and Smithfield Foods that began after Hurricane Floyd caused hog-waste lagoons to overflow and foul waterways last September.

Hog lagoons were a major issue in the Democratic primary. When asked whether politics played a role in the agreement, Easley replied: "In all of this, everyone in this now is interested in protecting the environment."

His opponent in the governor's race, Republican Richard Vinroot, said he mentioned in a debate last January having NCSU work to solve the hog lagoon problem.

"I do not know the details," Vinroot said in a prepared statement, "but I hope this new agreement turns out to be a step in the right direction."

The agreement is a voluntary one between the state and the company. Even so, Easley said all of the state's environmental laws and regulations will still apply to the company's operations. And the company still faces possible sanctions from the state's environmental regulators in cases pending against its subsidiaries.

Richard Poulson, Smithfield's vice president and adviser to the chairman, said the company entered into the agreement because it would best serve its long-term interests. The company bills itself as the largest hog producer in the world.

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Poulson said company officials think the lagoons that it and other farms use now are the best way to handle hog waste, but it is clear that changes are coming.

"We read the papers," Poulson said. "We read the polls, and we believe that a number of well-meaning people truly believe that some changes are coming."

"Because we are legal and permitted today doesn't mean that we will be five or 10 years from now. So we'd rather have the lead time to come up with something that will be more acceptable and frankly with the blessing of N.C. State and state regulators."

Environmentalists, the state Department of Environment and Natural Resources, and state pork producers hailed the agreement, which gives Virginia-based Smithfield Foods a stake in developing ways to reduce the bad smells and the threat of water pollution from hog waste.

Smithfield, which controls about 70 percent of the state's pork production, will pay N.C. State University $15 million over the next two years to develop new ways to dispose of hog waste.

Under part of the 24-page agreement brokered by Easley and his staff, the company will also pay $50 million over the next 25 years for environmental projects. The first $2 million payment is due in a month.

Before the year ends, Smithfield must have plans for correcting potential water-pollution risks on company farms, for closing abandoned lagoons, and for preventing pollution from buildings and lagoons that are vulnerable to flooding because they are near waterways.

The industry has been plagued by spills from overflowing or broken hog lagoons, complaints about odors and problems with treated waste used as fertilizer running off saturated fields.

The company agreed to install new treatment systems on company-owned farms - which now number 276 - within three years of the attorney general's approval of a conversion plan. Easley agreed to seek similar agreements with other hog companies.

Smithfield will help farmers who raise hogs under contract to pay for new treatment methods. The company has 1,204 contract operations in the state.

The state's 2,500 hog farms have been under scrutiny by state agencies and under fire by neighbors and environmentalists.

Just this year, Easley sued farms in Jones County owned by Brown's of Carolina, a subsidiary of Smithfield Foods. Brown's paid more than

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$98,000 in fines for violations at farms in Bladen and Jones counties. Murphy Family Farms Inc., another subsidiary of Smithfield, paid a $19,000 fine for problems at a Duplin County farm.

Four environmental groups - the New River Foundation, the Neuse River Foundation, the Cape Fear River Riverkeeper, and the New York-based Water Keeper Alliance - sued Smithfield and three of its North Carolina subsidiaries last month, demanding that they clean up three river basins contaminated by hog operations, stop using open cesspools and stop spraying waste on fields.

The pact between Smithfield and the Attorney General's Office could be a national model, said Daniel J. Whittle, senior attorney with the Environmental Defense, a national environmental group with a North Carolina office in Raleigh.

"All eyes are on North Carolina," Whittle said. "Hopefully, this will trigger action all over the place."

But success, they said, depends on Smithfield Foods and the Attorney General's Office implementing the agreement, and the company holding its contract farmers to higher standards.

"People who live downstream and downwind of factory hog farms will declare victory only when all hog lagoons are gone for good, and their environment and communities are free of pollution," Michelle Nowlin, attorney for the Southern Environmental Law Center, said in a statement.

Mike Williams, director of the animal waste management center at NCSU, said there are five alternatives to hog lagoons ready to be tested. A dozen more are being developed, and five or six of those will be ready for trial within six months.

The new methods are going to cost more to operate than the lagoons, Williams said, so it will be important that the alternatives produce marketable byproducts, such as fertilizer pellets.

"I think it would be highly unlikely that there will be just one silver bullet identified in two years," Williams said. "There will be a combination of processes that will offer options to the contract growers as well as the companies."

(News researcher Sarah Radick contributed to this report.)

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Smithfield Foods:

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The world's largest hog producer, producing a wide variety of pork and processed food products that it markets in the United States and to more than 25 other countries.

Headquarters: Smithfield, Va.

Chief executive officer: Joseph W. Luter III

2000 sales: $5.1 billion

2000 Net income: $75 million

Number of employees: 30,800

(Source: Bloomberg News)

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State's agreement with Smithfield:

Here's a look at key dates and steps in the legal agreement announced Tuesday by state Attorney General Mike Easley and Smithfield Foods.

July 25, 2000: State Attorney General Mike Easley and Smithfield Foods announce a legal agreement that calls for the elimination and cleanup of hog-waste lagoons at all of the company-owned and contract hog farms in the state. Smithfield also agrees to provide $65 million to the state - $50 million for to state environmental projects and $15 million to N.C. State University for research into alternative methods of hog-waste disposal. NCSU researchers are to select five alternative technologies for controlling waste and odor from hog farms to evaluate.

Aug. 25: First payment due from Smithfield to the state with payments going to organizations or funds designed by the attorney general. Smithfield agrees to pay $1 a hog up to $2 million. Payments will be made annually for the next 25 years.

Oct. 15: Smithfield must identify company-owned farms whose operations could adversely impact water quality and propose measures to correct deficiencies.

Nov. 15: Smithfield must submit a plan identifying company-owned farms with buildings or lagoons in the 100-year flood plain and proposed protective measures.

Dec. 15: Smithfield must identify abandoned lagoons on company-owned farms and measures to close them.

Jan. 15, 2001: Smithfield must identify wetlands and natural areas on company-owned farms that protect water quality.

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Jan. 25, 2001: Deadline for NCSU researchers to select an additional five to six technologies for evaluation.

Jan. 18, 2002: Smithfield will rank company-owned farms to determine which will convert first to new, alternative waste- and odor-control processes.

March 18, 2002: Attorney general will approve or disapprove Smithfield's priority list.

JULY 25, 2002: Deadline for NCSU researchers to report their findings on the best alternative waste- and odor-control methods for farms, depending on their size and location, if possible. Company-owned farms then have three years to convert to new methods.

(Source: N.C. Department of Justice)

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http://sogpubs.unc.edu/electronicversions/slb/slbfal05/article1.pdf

N.C. Supreme Court Rules More Penalties Payable to Public Schools

North Carolina School Boards Association v. Moore, 359 N.C.474, 614 S.E.2d 504 (2005).

By Shea Riggsbee Denning

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https://www.courtlistener.com/opinion/1353617/north-carolina-school-boards-assn-v-moore/

North Carolina School Boards Association v. Moore, 359 N.C.474, 614 S.E.2d 504 (2005).

Excerpt:

X. Payments by an Environmental Violator to Fund a "Supplemental Environmental Project"

On discretionary review, defendants contend the Court of Appeals erred in affirming the trial court's ruling that payments by an environmental offender to fund a Supplemental Environmental Project in lieu of paying a portion of a civil penalty assessed by DENR are subject to Article IX, Section 7. Defendants also contend the Court of Appeals erred in holding that payments by the City of Kinston to fund a specific SEP establishing a water resources training program at Lenoir Community College were subject to Article IX, Section 7.

DENR is authorized to assess civil penalties against any person or entity violating various environmental provisions set out in Chapter 143 of the General Statutes. N.C.G.S. §§ 143-215.6A, -215.88A, and -215.114A (assessing civil penalties for violations of, respectively, water quality laws, oil and hazardous substances storage laws, and air pollution control laws). Each

of these statutes provides that "the clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2." *Id.* §§ 143-215.88A(c) (2003); *see also id.* §§ 143-215.6A(h1)and -215.114A(h) (2003).

The dispute over the penalty in this case arises out of a policy memorandum issued by DENR in April 1998 creating an alternative enforcement mechanism whereby some portion of an assessed civil penalty may be applied to a SEP. The memorandum states:

Current statutory requirements dictate that civil penalties collected through the enforcement process be set-aside [sic] for educational purposes. Although public education is a very important and a sincere use of these funds, the process returns *525 very little to the environment which often suffers as a result of these environmental violations. This policy will set up a mechanism to provide opportunities for environmental benefit as a result of negotiated settlements where some portion of the settlement agreement may be in the form of a Supplemental Environmental Project (SEP).

Supplemental Environmental Projects are defined as projects that are beneficial to the environment and/or to public health that a defendant agrees to perform as part of a settlement to an enforcement action.... During development of potential settlement arrangements, staff may introduce the possibility of a SEP but should leave the final decision of whether or not to perform a SEP entirely up to the defendant. The SEP should bear some relationship, or nexus, to the violation.

Defendants argue that because the payments to the SEP are voluntary, are made to a third party, and are remedial in nature, the payments do not accrue to the State and are not subject to Article IX, Section 7. Defendants also assert that the Court of Appeals construed this Court's decision in *Craven Cty. Bd. of Educ. v. Boyles* too broadly. We disagree.

In *Craven County,* the board of education instituted a declaratory judgment action to recover proceeds paid by the Weyerhaeuser Company to the Department of Environment, Health and Natural Resources under a settlement agreement entered into after the Department assessed a civil penalty against the company for violation of the air pollution laws. *343 N.C. 87, 468 S.E.2d 50*. The settlement agreement provided that the payments did "`not constitute, nor shall they be construed as forfeitures, fines, penalties or payments in lieu thereof.'" *Id.* at 89, 468 S.E.2d at 51. In holding that the payment was subject to Article IX, Section 7, this Court stated:

In the instant case, it is not determinative that the monies were collected by virtue of a settlement agreement, nor is it determinative that defendants and Weyerhaeuser stated that the payment not be construed as a penalty. The monies were paid to settle the assessment of a penalty for violations of environmental standards. As we said in*Cauble,* it is neither "the

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label attached to the money" nor "the [collection] method employed," but "the nature of the offense committed" that determines whether the payment constitutes a penalty. *Id.* at 92, 468 S.E.2d at 53.

Similarly, in the present case, that the payment was made to a third party pursuant to a SEP incorporated into a settlement agreement does not change the nature of the payment. The payment would not have been made had DENR not assessed a civil penalty against the City of Kinston for violating a water quality law. To suggest that the payment was voluntary is euphemistic at best. Moreover, the money paid under the SEP did not remediate the specific harm or damage caused by the violation even though a nexus may exist between the violation and the program at the community college to train waste water treatment employees. The payment was still punitive in nature. Nor is the nature of the payment by the City of Kinston or any other violator altered by its being made to a third party pursuant to a policy promulgated by DENR in an attempt to circumvent the statutory and constitutional requirement that the clear proceeds of civil penalties be paid to the Civil Penalty and Forfeiture Fund.

In *Shore v. Edmisten* this Court held that neither statutes nor judgments could be effective "to direct payment of a fine anywhere other than to the counties for the use of the public schools." 290 N.C. at 633, 227 S.E.2d at 558. While the Secretary of DENR is authorized to remit civil penalties, *see, e.g.,* N.C.G.S. § 143-215.6A(f), that authority does not override the constitutional requirement in Article IX, Section 7. The payment in this case was triggered by an environmental violation for which the General Assembly authorized DENR to punish the violator. The statutory authorization may not be changed in form by the unilateral action of DENR. Defendants do not dispute that the payment authorized in the statute is punitive in nature. Thus, a payment to fund a SEP remains punitive.

Defendants also argue that the payments which are required to complete SEPs are *526 remedial rather than punitive. The policy memorandum drafted by DENR employees indicates that the SEP payments are not intended to punish the violator but to improve the environment. However, this Court has held that the terms and descriptions DENR and a violator use to refer to a payment are not determinative. *Craven Cty. Bd. of Educ.,* 343 N.C. at 92, 468 S.E.2d at 53. Defendants further contend that the nature of the SEP itself is remedial rather than punitive. In *Craven County* we held that a penalty's nature is not changed merely because the violator paid it pursuant to a settlement agreement. *Id.*

We note that in their brief defendants argue that pursuant to Article IV, Section 3 of the North Carolina Constitution, DENR, acting through its Secretary, has quasi-judicial powers as may be reasonably necessary to accomplish the purposes for which the agency was created

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and that in exercising the quasi-judicial power to remit a penalty through the use of the SEP, the Secretary was promoting DENR's purpose of protecting the environment by funding a remedial action necessary to prevent additional harm to the environment. Hence, the action was not without statutory or regulatory authority, nor was it an unconstitutional diversion of public school property or revenue. This argument, however, was not raised in the Court of Appeals and cannot be made for the first time in this Court. *See Pue v. Hood*, 222 N.C. 310, 313, 22 S.E.2d 896, 898 (1942) (parties may not "`change horses in the middle of the stream'" (citations omitted)).

We affirm the holding of the Court of Appeals that monies paid to fund a SEP, including the money paid by the City of Kinston to Lenoir Community College, are subject to Article IX, Section 7.

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