

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
No.4:12-CV-154

**North Carolina Environmental Justice
Network, Neuse Riverkeeper Foundation, Inc.,
and Waterkeeper Alliance, Inc.**

Plaintiffs,

v.

**Taylor Finishing, Inc., Mr. Donald Taylor,
Mr. Frederick A. McLawhorn, Mr. Justin T.
McLawhorn, and Mr. Aaron McLawhorn,**

Defendants.

COMPLAINT AND JURY DEMAND

33 U.S.C. § 1365

42 U.S.C. § 6972

Plaintiffs North Carolina Environmental Justice Network (“NCEJN”), Neuse Riverkeeper Foundation, Inc. (“NRF”), and Waterkeeper Alliance, Inc., by their attorneys, Debevoise & Plimpton LLP, Waterkeeper Alliance, and Strauch Fitzgerald & Green allege as follows for their complaint against Mr. Donald Taylor (“Defendant Taylor”) and Taylor Finishing, Inc. (formerly McLawhorn Livestock Farm (Banks)) (“Defendant Facility”), Mr. Frederick A. McLawhorn, Mr. Justin T. McLawhorn, and Mr. Aaron McLawhorn (“Defendants McLawhorns”) (collectively, “Defendants”) for violations of federal environmental laws.

PRELIMINARY STATEMENT

1. This case seeks to address the pollution and endangerment to human health and the environment caused by the illegal management, discharge and disposal of swine waste at Taylor Finishing, a concentrated animal feeding operation (“CAFO”), and its present and former owners. Defendants have caused the release of pollutants, including nitrogen, phosphorus and

bacteria, onto the lands and into waters surrounding Defendant Facility which is located in the coastal plain of North Carolina within the Neuse River Basin. Defendants have caused, and continue to cause, illegal discharges of pollutants without a permit, illegal open dumping of swine waste, and/or illegal treatment, storage, and disposal of swine waste, creating an imminent and substantial endangerment to human health and the environment in violation of federal law.

2. Plaintiffs bring this citizen suit under three separate provisions of federal law.

a. *First*, under section 505 of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1365, Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witness’ fees, for Defendant Taylor’s and Defendant Facility’s repeated violation of the CWA by continuously discharging pollutants into the waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §§ 1311(a), 1342, 1362(14).

b. *Second*, under section 7002(a)(1)(A) of Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(A), Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witness’ fees, for Defendant Taylor’s and Defendant Facility’s repeated violations of the RCRA, Section 4005(a), 42 U.S.C. § 6945(a), prohibition against the open dumping of solid waste in the form of industrial swine waste.

c. *Third*, under section 7002(a)(1)(B) of RCRA 42 U.S.C. § 6972(a)(1)(B), Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ fees and expert witness’ fees, for Defendants McLawhorns’, Defendant Taylor’s, and Defendant Facility’s contribution to the past and present treatment,

storage, and disposal of solid waste that may present an imminent and substantial endangerment to the health and/or environment.

JURISDICTION AND VENUE

A. JURISDICTION

3. This Court has personal jurisdiction over Defendants because Defendants are organized under the laws of North Carolina and/or have a principal place of business and/or reside within the Eastern District of North Carolina, and/or conduct substantial business activities within the Eastern District of North Carolina, and because the acts, events, or omissions at issue have occurred, and are continuing to occur, in the Eastern District of North Carolina.
4. This Court has subject matter jurisdiction under section 505(a) of the CWA, 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331. The relief requested is authorized pursuant to 33 U.S.C. §§ 1319 and 1365(a) and 28 U.S.C. §§ 2201 and 2202.
5. This Court has subject matter jurisdiction under sections 7002(a)(1)(A) & (B) of RCRA, 42 U.S.C. § 6972(a)(1)(A) & (B). The relief requested is authorized pursuant to 42 U.S.C. §§ 6972(a) and (e), 6928(a) and (g), and 28 U.S.C. §§ 2201 and 2202.
6. On December 22, 2010, January 11, 2011, and April 27, 2012 Plaintiffs gave notice of the CWA and RCRA violations and their intent to file suit to the Administrator of the United States Environmental Protection Agency (“EPA”), to the North Carolina Department of Environment & Natural Resources and the Division of Soil & Water (“NCDENR”), and to Defendants, as required by section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A) and by section 7002(b)(1)(A), 42 U.S.C. § 6972(b)(1)(A).
7. More than 60 days have passed since the notice was served and neither the EPA nor the State of North Carolina have commenced or are diligently prosecuting a civil or criminal action

to address the violations of the CWA. In addition, neither the EPA nor the State of North Carolina have commenced or are diligently prosecuting an administrative civil penalty action under the CWA, under section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), to address the violations prior to the issuance of the notice letter. A copy of the notice letters are attached hereto as **Exhibit A** and **Exhibit B**. Since service of the notice on Defendants, violations of the CWA have continued and are continuing.

8. More than 90 days have passed since the notice was served and neither the EPA nor the State of North Carolina have commenced or are diligently prosecuting a civil or criminal action to address the violations under the RCRA, as required by section 7002 of the RCRA, 42 U.S.C. § 6972(b). In addition, neither the EPA nor the State of North Carolina have commenced or are diligently prosecuting an action under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), engaged in a removal action under section 104 of CERCLA, incurred costs to investigate a Remedial Investigation and Feasibility Study, or obtained a court order pursuant to section 106 of CERCLA. Since service of the notice on Defendants, violations of the RCRA have continued and are continuing.

B. VENUE

9. Venue is proper in the Eastern District of North Carolina pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1) because the violations are occurring within the District. Venue is also proper in the Eastern District of North Carolina pursuant to section 1391(b) of Title 28, 28 U.S.C. § 1391(b) because Defendants reside in the district, and the discharges, acts and omissions occurred in the District.

10. Venue is appropriate in the Eastern District of North Carolina pursuant to section 7002(a)(2) of the RCRA, 42 U.S.C. § 6972(a)(2), because the violation occurred in the District

and because the pollution threatens the health and environment of the District. Venue also is proper in the Eastern District of North Carolina pursuant to section 1391(b) of Title 28, 28 U.S.C. § 1391(b) because Defendants reside in the District, and the disposals, acts, and omissions occurred in the District.

PARTIES

A. PLAINTIFF NORTH CAROLINA ENVIRONMENTAL JUSTICE NETWORK

11. Plaintiff North Carolina Environmental Justice Network (“NCEJN”) sues on behalf of itself and its members.

12. NCEJN is a not-for-profit membership corporation organized under the laws of North Carolina, with offices in Tillery, North Carolina. It is concerned both with the environmental and human health effects caused by industrial animal feeding operations, including CAFOs, and with protecting and preserving North Carolina lands and waterways, including the Long Branch, Trent River, Neuse River, Neuse Estuary, and their associated lands and waters (“Neuse River Basin”).

13. NCEJN’s organizational interests are being and will be impacted by Defendants’ failure to properly dispose of swine waste because those discharges impair the habitability, recreational value, and aesthetic benefits of the affected waterways and communities.

14. NCEJN has approximately 400 members across the State of North Carolina. Approximately 75 to 400 of NCEJN’s members live in the Neuse River Basin, and approximately two next to and within the general vicinity of Defendant Facility. NCEJN’s members are concerned with the negative environmental, economic, health, aesthetic and recreational impacts on the Neuse River Basin, including the Trent River, Neuse River and Neuse River Estuary, as a result of Defendants’ unlawful conduct.

15. NCEJN's members use, recreate in, and enjoy the Neuse River Basin, including its lands and waters, in the following ways:

a. NCEJN's members live within the watershed impacted by Defendant Facility. By causing swine waste to contaminate the waters, lands, and air of the Neuse River Basin, Defendants have significantly undermined NCEJN's members' quality of life.

b. NCEJN's members recreate, or would recreate, by fishing or boating in the Neuse River Basin. By causing runoff of swine waste to drain into the Long Branch, the Trent River, the Neuse River, and the Neuse River Estuary, Defendants have limited and/or prevented NCEJN's members from engaging in these activities.

c. NCEJN's members hike, and observe and enjoy, or would hike, and observe and enjoy, wildlife in the watershed around Defendant Facility. By causing pollutants from the swine waste to contaminate the area surrounding Defendant Facility, and by causing runoff of swine waste to drain into the Long Branch, the Trent River, the Neuse River, and Neuse River Estuary, Defendants have limited and/or prevented NCEJN's members from engaging in those activities.

d. NCEJN's members hunt, or would hunt, wildlife in the watershed around Defendant Facility. By causing pollutants from the swine waste to contaminate the area surrounding Defendant Facility, and by causing runoff of swine waste to drain into the Long Branch, the Trent River, the Neuse River, and the Neuse River Estuary, areas in which these animals live, feed and drink, Defendants have limited and/or prevented NCEJN's members from engaging in those activities.

e. NCEJN's members use, or would use, the outdoor air to dry their clothes, and ventilate their homes. By causing airborne pollutants and odor from swine waste to contaminate the area surrounding Defendant Facility, Defendants have limited and/or prevented NCEJN members from engaging in those activities.

f. NCEJN's members have an aesthetic and health interest in keeping the impacted waters in the Neuse River Basin free of animal manure and other discharged pollutants.

16. Defendants' unlawful discharges have negatively impacted and continue to negatively impact NCEJN's members' interests in the Neuse River Basin.

17. Enforcement of the CWA and RCRA will help to restore and protect water quality in the Neuse River Basin, thereby promoting the interests of NCEJN and improving the use and enjoyment of the area by its members.

B. PLAINTIFF NEUSE RIVERKEEPER FOUNDATION, INC.

18. Plaintiff Neuse Riverkeeper Foundation, Inc. ("NRF") sues on behalf of itself and its members.

19. NRF is a not-for-profit membership corporation organized under the laws of the State of North Carolina, with offices in New Bern, North Carolina. NRF is dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of the Neuse River Basin, including Long Branch, the Neuse River, the Neuse Estuary, the Trent River, and other waters and lands affected by Defendants' unlawful activities. The economic, health, recreational, aesthetic, and environmental interests of NRF and its members have been, are being, and will be adversely impacted by Defendants' unlawful waste management practices and discharges of swine waste and the resulting impairment of the lands and waters in the Neuse

River Basin. NRF has approximately 450 members across the state of North Carolina, many of whom reside in the Neuse River Basin, next to and within the general vicinity of Defendant Facility. NRF's members are concerned with the negative environmental, economic, health, aesthetic, and recreational impacts on the Neuse River Basin, including Long Branch, the Trent River, the Neuse River, and the Neuse River Estuary, caused by Defendants' unlawful waste management practices and discharges. NRF's members use, recreate in, and enjoy the Neuse River Basin in the following ways:

a. NRF's members live within the watershed impacted by Defendant Facility. By causing swine waste to contaminate the waters and lands of the watershed, Defendants have significantly undermined NRF's members' quality of life.

b. NRF's members earn or would earn a living, including by fishing and photography on the waters impacted by discharges from Defendant Facility. By causing swine waste to drain into Long Branch, the Trent River, the Neuse River and the Neuse River Estuary, Defendants have limited and/or prevented NRF's members from earning a living through fishing, photography, or other commercial activity on these waters.

c. NRF's members recreate, or would recreate, by fishing, swimming, rafting, kayaking, canoeing, and other boating in and around the waters impacted by discharges from Defendant Facility. By causing swine waste to drain into Long Branch, the Trent River, Neuse River, and the Neuse River Estuary, Defendants have limited and/or prevented NRF's members from engaging in these activities.

d. NRF's members hike and observe and enjoy wildlife in the watershed around Defendant Facility. By causing pollutants from the swine waste to contaminate the area

surrounding Defendant Facility, Defendants have limited and/or prevented NRF's members from engaging in these activities.

e. NRF's members eat, or would eat fish from the Neuse River Estuary, Neuse River, and Trent River.

f. NRF and its members have an environmental, aesthetic and health interest in keeping the Neuse River Basin and impacted waters free of animal manure and other discharged pollutants.

20. Defendants' unlawful discharges have negatively impacted and continue to negatively impact NRF and its members' interests in, and use and enjoyment of, the Neuse River Basin.

21. Enforcement of the CWA and RCRA will help to restore and protect water quality in the Neuse River Basin, thereby promoting the interests of NRF and improving the use and enjoyment of the area by its members.

C. PLAINTIFF WATERKEEPER ALLIANCE, INC.

22. Plaintiff Waterkeeper Alliance, Inc. (hereinafter "Waterkeeper") sues on behalf of itself and its 11,500 individual members.

23. Waterkeeper is a national non-profit organized under the laws of the State of New York representing the interest of nearly 200 member watershed groups, including NRF. It has member organizations in North Carolina representing numerous North Carolina members, including the approximately 450 NRF members. Waterkeeper Alliance promotes water quality protection and the restoration of waters, including the Neuse River Basin, through litigation, education, scientific research, and other legal means; advocates for compliance with environmental laws

such as the CWA and RCRA; responds to citizen complaints; identifies threats to water bodies; and generally works to guarantee the public's right to a pollution-free environment.

24. In addition to its member organizations, Waterkeeper has individual members who reside and earn a living in and on the Neuse River Basin, including the Neuse River, Neuse River Estuary and Trent River, in North Carolina. These members use the Neuse River Basin for recreation, including fishing, swimming, hiking, boating, wildlife viewing, bird-watching, photography, and other uses. Some of these members own property along the Neuse and Trent Rivers. By causing swine waste to contaminate the waters and lands of the Neuse Basin, Defendants have significantly undermined Waterkeeper Alliance's members' quality of life; limited and/or prevented Waterkeeper Alliance's members from earning a living through fishing, photography, or other commercial activity on these waters; limited and/or prevented Waterkeeper Alliance's members from engaging in recreational activities and wildlife viewing; and adversely affected their aesthetic enjoyment of the affected land and waters.

25. Defendants' unlawful discharges have negatively impacted and continue to negatively impact Waterkeeper Alliance's and its members' interests in and use and enjoyment of the Neuse River Basin, including the Trent River, Neuse River, and Neuse River Estuary.

26. Enforcement of the CWA and RCRA will help to restore and protect water quality in the Neuse River Basin, thereby promoting the interests of Waterkeeper Alliance and its member organizations and improving the use and enjoyment of the area by its members.

D. DEFENDANTS

27. Defendant Facility, Taylor Finishing, Inc., is a corporation organized under the laws of the State of North Carolina and doing business in Trenton, North Carolina.

28. Defendant Facility is a swine concentrated animal feeding operation (“CAFO”) located in the Coastal Plain of North Carolina, in Jones County, North Carolina and has the official mailing address of 498 E. Pleasant Hill Rd., Pink Hill, NC, 28572-8719.

29. Defendants McLawhorns were the representatives, registered agents, owners, and/or operators of Defendant Facility, known then as McLawhorn Livestock Farm (Banks), until on or about November 23, 2010. Their mailing address is 5903 Highway 17S New Bern, NC 28562, 5909 Highway 17S New Bern, NC 28562, and/or 6001 Highway 17S New Bern, NC 28562.

30. Defendant Donald E. Taylor has been the representative, registered agent, owner, and/or operator of Defendant Facility since on or about November 23, 2010, when he purchased Defendant Facility from Defendants McLawhorns. Defendant Taylor changed the name of Defendant Facility from McLawhorn Livestock Farm (Banks) to Taylor Finishing, Inc.

31. All Defendants were or are engaged in, and are and/or were responsible for, the operation of a swine animal feeding operation, the generation of large volumes of swine waste and the handling, storage, disposal and discharges of swine waste and associated pollutants onto lands and into waters surrounding Defendant Facility and the Neuse River Basin. All Defendants are responsible for the violations of federal law respectively alleged herein against them, as well as the resultant injury to lands and waters in the Neuse River Basin.

32. All parties are “persons” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362(5), and Section 1004 of the RCRA, 42 U.S.C. § 6903(15).

FACTUAL ALLEGATIONS

A. POLLUTION FROM SWINE WASTE

33. Pollutants found in swine waste include nutrients, such as nitrogen, ammonia, nitrates, phosphorus, and pathogenic bacteria, viruses and parasites, as well as other pollutants, that can

endanger human health and environment, cause pollution and cause violations of water quality standards when released onto land or into water.

34. Elevated levels of nutrients in waters can cause harmful algal blooms, excessive algal growth, toxic blue-green algae production, and eutrophication of water bodies. In turn, these blooms can produce “dead zones” in water bodies where dissolved oxygen levels are so low that most aquatic life cannot survive and can cause fish kills. Excessive algae in drinking water sources can cause closure of water bodies to fishing and recreation, as well as result in the production of harmful disinfection byproducts in drinking water, such as trihalomethanes and haloacetic acids, that can produce serious adverse effects on human health.

35. Fecal coliform and *E. coli* bacteria are microbial pathogens associated with human and animal waste. High levels of fecal bacteria can indicate a water body is not safe for body-contact recreation, for consumption of shellfish, or for use as drinking water. Excessive amounts of fecal bacteria in water used by humans can cause diarrhea, cramps, nausea, headaches, and other symptoms, as well as indicate the presence of other pathogenic bacteria, viruses and protozoa that can present serious risk to human health.

B. NEUSE RIVER BASIN

36. The Neuse River Basin is the third largest river basin in North Carolina and is contained entirely within the boundaries of North Carolina. The Long Branch is a tributary to the Trent River, the Trent River is a tributary to the Neuse River, and the Neuse River Estuary and all of these water bodies are contained within the Neuse River Basin.

37. The Neuse River feeds one of the nation’s largest and most productive coastal estuaries, the Albermarle-Pamlico Sound, a nursery for 90 percent of the commercial seafood species caught in North Carolina. The Neuse River Basin is an important spawning area for numerous

species such as herring, shad, and striped bass, and provides habitat for several important recreational and commercial species, including catfish, bass, flounder, blue crabs, shrimp, and oysters, as well as several rare and/or endangered species. The Neuse River Basin is heavily used for outdoor recreational activities, such as hiking, biking, wildlife viewing, recreational boating, recreational and commercial fishing, and commercial shellfish harvesting.

38. Excessive nutrient loading is the primary stressor causing water quality impairment in the Neuse River Basin. The water quality and use of the waters in the Neuse River Basin for recreational and commercial activities has been adversely affected by the growth of excess algae and eutrophication from nutrient pollution.

39. The already declining Neuse River Basin water quality has been adversely impacted by the increase in the number of CAFOs in the Neuse River watershed and the release of nutrients from these facilities into the surrounding waters and onto the surrounding land. This is, in part, because many of these CAFOs have ditches and tile drains that serve as direct conveyances for the highly nutrient-laden water from CAFOs to surface waters.

40. As a result of nutrient pollution, all of the waters in the Neuse River watershed are designated Nutrient Sensitive Waters – waters that require reductions in nutrients such as nitrogen and phosphorus.

C. DEFENDANT FACILITY’S SITE DESCRIPTION AND WASTE DISPOSAL PRACTICES

41. Defendant Facility is located in the Neuse River Basin.

42. It is bordered on the east by a tributary of the Long Branch and on the northwest, west, and southwest by the Long Branch. The Long Branch is a tributary to the Trent River which is a tributary of the Neuse River.

43. Defendant Facility is a Large CAFO, as defined by 40 CFR § 122.23, that confines or stables approximately 10,200 feeder-to-finish swine, and is designed to hold 4,380 wean-to-feeder swine.

44. In or about July 1998, July 2007, and October 2009, North Carolina's Department of Environment and Natural Resources issued Defendant Facility a Certificate of Coverage (Number AWS520002), requiring the operation of the Defendant Facility's animal waste collection, treatment, storage, and land application system in accordance with the state General Permit AWG100000, which requires compliance with a "zero discharge" standard, prohibiting any discharges of pollutants to waters of the state.

45. Defendants have not applied for, and do not possess, a federal NPDES permit for the Defendant Facility as required by the CWA.

46. Defendant Facility and the land where swine waste is applied is traversed by drainage ditches that carry water and associated pollutants from the facility and land application area into the Long Branch which in turn flows to the Trent River and then to the Neuse River, which are waters of the United States. The Neuse River empties into the Albermarle-Pamlico Sound. The Neuse River is listed as a nutrient-impaired water under the CWA.

47. Defendant Facility is underlain by shallow groundwater that discharges to the Long Branch which in turn flows to the Trent River and then to the Neuse River.

48. Defendant Facility has disposed, and is continuing to dispose of large volumes of swine waste on land at the facility in excess of any legitimate crop fertilization requirement, on bare ground, directly into water, into drainage ditches, and generally in a manner that causes runoff of waste, discharges of pollutants, and contamination of groundwater. Discharges occur, without limitation, through direct releases to water, groundwater transport, and runoff generated by

rainfall from the areas where Defendants have stored and disposed of swine waste at Defendant Facility.

49. Defendant Facility has a pattern of historic and continuing illegal discharges and releases of pollutants from swine waste to land, groundwater, and surface waters of the Neuse River Basin. These historic and continuing discharges, releases, and waste management practices pose an imminent and substantial endangerment to human health and the environment in the Trent and Neuse River watersheds.

50. Swine waste generated at Defendant Facility has been improperly treated, stored, and disposed of in a manner that has created an “open dump” and has polluted the surrounding land, groundwater and surface water.

51. Water sampling and investigations conducted by Plaintiffs have confirmed the discharge of pollutants from Defendant Facility to waters of the United States. Sampling of the Long Branch and a ditch channeling runoff from Defendant Facility conducted by Plaintiffs shows elevated levels of nutrients, including nitrogen and phosphorus, and fecal coliform in discharges from Defendant Facility.

52. Sampling conducted by Plaintiff detected elevated levels of fecal coliform in water running downstream from Defendant Facility in the Long Branch and the ditch, without limitation, on or about the following dates: September 29, 2008, October 20, 2008, October 27, 2008, November 6, 2008, December 12, 2008, January 14, 2009, February 10, 2009, February 19, 2009, March 16, 2009, March 23, 2009, August 4, 2009, November 23, 2009, December 2, 2009, December 3, 2009, February 23, 2010, June 17, 2010, June 29, 2010, August 5, 2010, August 25, 2010, October 1, 2010, October 5, 2010, November 17, 2010, December 2, 2010, January 18, 2011, March 11, 2011, March 17, 2011, July 14, 2011, August 5, 2011, August 15,

2011, September 6, 2011, September 14, 2011, September 22, 2011, October 17, 2011, January 12, 2012, June 13, 2012, and June 26, 2012.

53. Sample results show fecal coliform counts as high as 29000 MPN/100ml, 49000 MPN/100ml, 63000 MPN/100ml, 6800 MPN/100ml, 8000 MPN/100ml, 20000 MPN/100ml, 33000 MPN/100ml, and 87000 MPN/ml, greater than 72 times over North Carolina standards for surface waters.

54. Sampling conducted by Plaintiffs also detected elevated levels of nutrients in water running downstream from Defendant Facility, in the Long Branch and the ditch, without limitation, on or about the following dates: September 29, 2008, October 20, 2008, October 27, 2008, November 6 and 19, 2008, December 12, 2008, January 14, 2009, February 10 and 19, 2009, March 16 and 23, 2009, August 4, 2009, November 23, 2009, December 2 and 3, 2009, February 23, 2010, June 17 and 29, 2010, August 5 and 25, 2010, October 1 and 5, 2010, November 17, 2010, December 2, 2010, January 18, 2011, March 11 and 17, 2011, May 3, 2011, July 14, 2011, August 5 and 15, 2011, September 6, 14 and 22, 2011, October 17, 2011, January 12 and 25, 2012, February 21 and 27, 2012, April 16, 2012, and June 13 and 26, 2012.

55. Photographs taken on or about December 1, 2009, February 19, 2010, August 25, 2010, October 2 and 4, 2010, November 15, 2010, February 18, 2011, and April 6, 2011, and August 5, 2011 also document the discharge of swine waste effluent from Defendant Facility into the Long Branch. These photographs show the color, flow, and quantity of effluent flowing from Defendant Facility's spray-fields and into the Long Branch. The photographs also show the direct application of effluent to drainage ditches, which is contrary to the agronomic use of effluent as fertilizer. Application of waste materials in this manner places substantial quantities

of effluent directly into ditches; the ditches, in turn, direct the effluent off the property and into the Long Branch.

56. Photographs taken on or about December 1, 2009, February 19, 2010, July 13, 2010, October 2 and 4, 2010; January 5, 2011, January 18, 2011, February 18, 2011, May 19, 2011 and August 5, 2011 show the application of effluent to fields at rates greater than necessary or desirable for crop fertilization, causing “ponding” and over-saturation of fields with effluent.

57. Defendant Facility has a history of violations recorded by the North Carolina Department of Environment and Natural Resources, Division of Water Quality (“DWQ”), including over-irrigation of fields, excessive ponding waste on fields, and land application of waste on bare ground. The DWQ found violations on January 28 and March 11, 2010.

CLAIMS

A. COUNT ONE: DEFENDANT FACILITY AND DEFENDANT TAYLOR HAVE AND CONTINUE TO DISCHARGE POLLUTANTS WITHOUT AN NPDES PERMIT IN VIOLATION OF SECTION 505 OF THE CWA.

58. Plaintiffs restate and re-allege herein the foregoing allegations.

59. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States unless pursuant to the terms of an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

60. Defendant Facility is a swine Large CAFO and is a point source under the CWA pursuant to 42 U.S.C. § 1362(14) and 40 C.F.R. 122.23(b)(2) and (4).

61. Discrete conveyances, including but not limited to ditches, spray equipment, vehicles, waste lagoons and impoundments, ventilation fans and subsurface drainage tiles, are point sources under the CWA pursuant to 42 U.S.C. § 1362(14).

62. Defendant Facility and Defendant Taylor have discharged and continue to discharge pollutants at and from Defendant Facility, a point source, and through discrete conveyances, to waters of the United States, including the Long Branch, the Trent River and the Neuse River. 33 U.S.C. § 1362(6).

63. Defendant Facility and Defendant Taylor have discharged and continue to discharge pollutants from a point source into waters of the United States without obtaining an NPDES permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

64. By discharging and continuing to discharge pollutants such as solid waste, biological waste, and agricultural waste, including bacteria, nitrogen and nitrogen compounds, phosphorus and phosphorus compounds, ammonia, and other pollutants into waters of the United States without an NPDES permit, Defendant Facility and Defendant Taylor have violated and continue to violate section 301(a) of the CWA, 33 U.S.C. §1311(a).

65. Defendant Facility is constructed, managed, and operated such that pollutants are and will continue to be discharged into waters of the United States. Therefore, Defendant Facility will remain in violation of the CWA for each day that it operates without an NPDES permit. Consequently, Defendant Facility's and Defendant Taylor's violations are continuing, in that they are at least intermittent or sporadic.

66. Defendant Facility's and Defendant Taylor's violations of the CWA discharge provisions are recent, frequent, and likely to continue.

67. Defendant Facility and Defendant Taylor should be subject to an injunction in accordance with 33 U.S.C. § 1365(a).

68. Defendant Facility and Defendant Taylor are subject to assessment of civil penalties, as well as all costs of litigation (including Plaintiffs' reasonable attorneys and expert witness fees), pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d).

69. For the purpose of assessing the maximum penalty for which Defendant Facility and Defendant Taylor may be liable, each unlawful discharge of waste constitutes a separate violation of section 301(a) pursuant to section 309(d), 33 USC § 1319(d). Based thereon, Defendant Facility and Defendant Taylor are liable for civil penalties of up to \$37,500 per day for each violation. 33 U.S.C. § 1319(d),(g); 40 C.F.R. § 19.4, Table 1.

B. COUNT TWO: DEFENDANT FACILITY AND DEFENDANT TAYLOR HAVE VIOLATED AND CONTINUE TO VIOLATE THE RCRA PROHIBITION AGAINST OPEN DUMPING

70. Plaintiffs re-state and re-allege herein the foregoing allegations.

71. Swine waste from Defendant Facility is "solid waste" within the meaning of section 1004(27) of RCRA, 42 U.S.C. § 6903(27), relevant regulatory definitions, including those in 40 C.F.R. Part 261, and section 4005 of RCRA, 42 U.S.C. § 6945.

72. Defendant Facility and Defendant Taylor do not operate "a sanitary landfill which meets the criteria promulgated under section 6944 . . . and which is not a facility for disposal of hazardous waste," and therefore operate an open dump under the meaning of section 1004(14), 42 U.S.C. § 6903(14), and all relevant regulatory definitions, including those in 40 C.F.R. Part 257.

73. Defendant Facility, including all contiguous land, structures, other appurtenances, and improvements on the land, is a "facility" within the meaning of the RCRA's open dumping provision, 40 C.F.R. § 257.2.

74. The disposal, dumping, leaking, and placing of swine waste onto lands in and around Defendant Facility has been applied at greater than agronomic rates for the purposes of the crops

planted and is in excess of any legitimate fertilization purpose under 40 C.F.R. §§ 257.2 and 261.4.

75. When Defendant Facility and Defendant Taylor over-apply swine waste in quantities that are greater than necessary or desirable for crop fertilization they “dispose” of “solid waste” under the meaning of the RCRA. *See* 42 U.S.C. §§ 6903(3), 6903(27).

76. Defendant Facility and Defendant Taylor have engaged and continue to engage in open dumping of solid waste through discharging, dumping, leaking, and placing of swine waste onto lands surrounding Defendant Facility and into nearby surface water. *See* 42 U.S.C. § 6903(14), 40 C.F.R. Part 257.

77. Defendant Facility and Defendant Taylor have further discharged and continue to discharge waste and associated pollutants onto lands and into drainage ditches and surface waters surrounding Defendant Facility.

78. Defendant Facility’s and Defendant Taylor’s “open dumping” practices are ongoing, and Defendant Facility and Defendant Taylor continue to operate Defendant Facility without providing for the proper disposal of animal waste.

79. As described above, Defendant Facility’s and Defendant Taylor’s animal waste disposal and waste management practices constitute “open dumping” in violation of 42 U.S.C. § 6945(a) and applicable EPA regulations.

80. Defendant Facility is constructed, managed, and operated such that it will continue to be in violation of the RCRA by open dumping in violation of 42 U.S.C. § 6945(a).

81. Defendant Facility and Defendant Taylor should be subject to an injunction ordering the cessation of ongoing violations, pursuant to 42 U.S.C. § 6945(a), and 42 U.S.C. § 6972(a)(1)(A) & (B).

82. Defendant Facility and Defendant Taylor are subject to assessment of civil penalties, as well as all costs of litigation (including Plaintiffs' reasonable attorneys and expert witness fees), pursuant to 42 U.S.C. § 6945(a), 42 U.S.C. § 6972(a)(1)(A), and 42 U.S.C. § 6928(a) & (g).

83. For the purpose of assessing the maximum penalty for which Defendant Facility and Defendant Taylor may be liable, each occurrence of open dumping constitutes a separate violation of 42 U.S.C. § 6945(a) and applicable EPA regulations. Based thereon, Defendant Facility and Defendant Taylor are liable for civil penalties of up to \$37,500 per day for each violation. 42 U.S.C. § 6928(a) & (g); 40 C.F.R. § 19.4, Table 1.

C. COUNT THREE: DEFENDANTS' PAST AND PRESENT WASTE DISPOSAL PRACTICES POSE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HEALTH OR THE ENVIRONMENT

84. Plaintiffs re-state and re-allege herein the foregoing allegations.

85. RCRA prohibits "any person . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility," from disposing of solid waste which "may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B).

86. Defendant Facility has been and is a generator of swine waste.

87. Swine waste is a solid waste under the RCRA, 42 U.S.C. § 6903(27), 40 C.F.R. § 261.2.

88. Defendants McLawhorns were generators of swine waste and/or were representatives, agents, owners, and/or operators of a treatment, storage, or disposal facility for swine waste.

89. Defendant Taylor has been and continues to be a generator of swine waste and/or was and is a representative, agent, owner, and/or operator of a treatment, storage, or disposal facility for swine waste.

90. All Defendants are “persons” under the RCRA who have in the past and/or continue to contribute to the past or present handling, storage, treatment, transportation, or disposal of swine waste at Defendant Facility and its adjacent lands and waters.

91. Runoff, leaching, and discharges of animal waste and its constituents impairs water quality, causes fish and shellfish closures, adversely affects aquatic life and wildlife, makes water unsafe for drinking and recreation, causes violations of water quality standards, and contributes to the formation of potentially carcinogenic disinfection byproducts in drinking water, toxic blue-green algae, and toxic *Pfiesteria piscicida*.

92. An imminent and substantial endangerment to health or the environment in the Neuse River Basin may be presented, and is in fact presented, as a direct and proximate result of Defendants’ past and present contribution to the handling, storage, treatment, transportation, or disposal of swine waste at Defendant Facility and its adjacent lands and waters, which presents potential exposure to numerous pollutants, bacteria, viruses, and pathogens.

93. Defendant Facility is constructed, managed, and operated such that it will continue to be in violation of the RCRA by its treatment, storage, and disposal of waste that may present an imminent and substantial endangerment to health and the environment in violation of 42 U.S.C. § 6972.

94. Defendant Facility and Defendant Taylor should be subject to an injunction ordering them to cease violations, to remediate Defendant Facility and the lands and waters affected by Defendants’ conduct, and to take all such other action as may be necessary to abate the imminent and substantial endangerment to health or the environment, pursuant to 42 U.S.C. § 6972(a)(1)(B).

95. Defendants are subject to assessment of civil penalties, as well as all costs of litigation (including Plaintiffs' reasonable attorneys and expert witness fees), pursuant to 42 U.S.C. § 6972(a)(1)(B) and 42 U.S.C. § 6928(a) & (g).

96. For the purpose of assessing the maximum penalty for which Defendants may be liable, each occurrence of open dumping constitutes a separate violation of 42 U.S.C. § 6972(a)(1)(B) and applicable EPA regulations. Based thereon, Defendants are liable for civil penalties of up to \$37,500 per day for each violation. 42 U.S.C. § 6928(a) & (g); 40 C.F.R. § 19.4, Table 1.

RELIEF REQUESTED

WHEREFORE, Plaintiffs seek a judgment from this Court against Defendants as follows:

97. Declare Defendants to have violated and to be in violation of the CWA and RCRA, 33 U.S.C. §§ 1311 and 1342 and RCRA, 42 U.S.C. §§ 6972(a)(1)(A) and 6972(a)(1)(B);

98. Order Defendant Facility and Defendant Taylor to immediately cease and desist from discharging pollutants waste into waterways of the United States except in compliance with without fulfilling the mandatory permitting requirements of the CWA and enjoin Defendant Facility and Defendant Taylor from discharging or engaging in activities likely to discharge any pollutants to waters of the United States except where such discharge is due to or a direct result of a "25-year 24-hour rainfall event for that location";

99. Enjoin Defendant Facility and Defendant Taylor from operating Defendant Facility in such a manner as will result in the further violation of the CWA and RCRA;

100. Order Defendant Facility and Defendant Taylor to obtain an NPDES permit;

101. Order Defendant Facility and Defendant Taylor to cease all storage, treatment, disposal, and release of solid waste that constitutes a violation of the RCRA;

102. Order a comprehensive assessment of Defendant Facility and surrounding environment by an independent engineer appointed by the Court upon recommendation by the parties to ensure compliance with the CWA and RCRA and a comprehensive remediation of Defendant Facility that will restore the environment and abate all discharges and releases of pollutants, restore water quality, and ameliorate the imminent and substantial endangerment to human health and the environment, with costs to be borne by all Defendants;

103. Order Defendant McLawhorns to contribute, to the extent they are at fault, to the monetary costs of cleanup and remediation necessary to restore the environment and water quality and ameliorate the imminent and substantial endangerment to human health and the environment, as authorized by the Court's injunctive powers under the RCRA, 42 U.S.C. § 6972(a).

104. Authorize Plaintiffs, for the period beginning on the date of the Court's order and running for five years after Defendant Facility and Defendant Taylor achieve compliance with the CWA, RCRA, and an NPDES permit, to sample or arrange for sampling of any waste, soil, groundwater, and surface water at Defendant Facility, including upstream and downstream sampling of surface water, with costs to be borne by Defendant Facility and/or Defendant Taylor;

105. Order Defendants to provide Plaintiffs, for the period beginning on the date of the Court's order and running five years after Defendants achieve compliance with the CWA, RCRA, and an NPDES permit, with a copy of all monitoring results, reports and other documents which Defendants have submitted or submit to the State or Federal government related to Defendant Facility when submitted to these authorities and all monitoring results

which are not submitted to the State or Federal government within 30 days of their receipt by Defendants;

106. Order Defendant Facility and Defendant Taylor to pay appropriate civil penalties for each day of each violation of section 301(a), pursuant to sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a), including violations listed in this complaint and those that may come to light throughout the course of this litigation;

107. Order Defendant Facility and Defendant Taylor to pay appropriate civil penalties for each day of each violation of the RCRA, 42 U.S.C. § 6972(a)(1)(A) and (B) as authorized by 42 U.S.C. §§ 6928(a) and (g), including those violations listed in this Complaint and those that may come to light in the course of this litigation;

108. Order Defendants McLawhorns to pay appropriate civil penalties for each day of each violation of the RCRA, 42 U.S.C. § 6972(a)(1)(B) as authorized by 42 U.S.C. §§ 6928(a) and (g), including those violations listed in this Complaint and those that may come to light in the course of this litigation;

109. Award Plaintiffs costs (including reasonable attorney and expert witness fees) as authorized by section 505(d) of the CWA, 33 U.S.C. § 1365(d) and RCRA section 7002(e), 42 U.S.C. § 6972(e); and

110. Award such other relief as this Court deems appropriate.

Dated: July 27, 2012.

Respectfully submitted,

/s/ Bethany Davis Noll

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JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues triable thereby in the above-captioned action.

/s/ Bethany Davis Noll

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