

February 4, 2021

The Honorable Joshua Stein  
Attorney General  
State of North Carolina  
114 West Edenton Street  
Raleigh, NC 27603

Re: Enforcement of the 2000 Smithfield Agreement

Dear Attorney General Stein:

The undersigned organizations, representing more than 200,000 North Carolinians, request that you require Smithfield Foods (“Smithfield”) to implement environmentally superior waste management technology at company-owned and contract hog operations in North Carolina to address harm to our state’s waterways, air quality, and citizens’ health, as required by the 2000 Smithfield Agreement with then-Attorney General Michael Easley (“the Agreement”). We also request that you intervene in pending requests by Smithfield to modify four of its hog operations that are part of the first large-scale swine waste-to-energy biogas project initiated by Align RNG, a joint venture of Smithfield and Dominion Energy, and require Smithfield to comply with its obligations under the Agreement to implement cleaner technology before moving forward with the project.

On July 25, 2000, then-Attorney General Easley entered a formal agreement with Smithfield, which remains in full force and effect.<sup>1</sup> Central to the Agreement is a requirement that Smithfield convert all of its lagoon and sprayfield waste management systems at its company-owned and contract hog operations to cleaner, more sustainable technology for managing hog waste that protects people and the environment—referred to in the Agreement as environmentally superior technology—that is economically feasible. Environmentally superior technologies eliminate direct and indirect discharges of waste to surface waters and substantially eliminate emissions of ammonia, odor, the release of disease-transmitting vectors and pathogens, and nutrient and metal contamination of soil and groundwater. Several environmentally superior technologies were identified and evaluated after the Agreement was finalized, but none of these were determined to be economically feasible at that time. Twenty years after the Agreement, circumstances have substantially changed.

Smithfield now proposes to collect biogas from company-owned and contract hog operations and process the biogas at a proposed facility constructed by Align RNG. The biogas will be injected into pipelines and generate revenue through sales and renewable energy credits. This revenue-generating enterprise fundamentally alters the economics of waste management—and the economic feasibility of utilizing environmentally superior technologies.

Smithfield’s proposed approach would lock-in the harmful lagoon and sprayfield system for decades to come by allowing the corporation to profit from this system without moving toward cleaner technology. Biogas production will do little to address odors, pathogens, ammonia, or disease-causing vectors that

---

<sup>1</sup> The Agreement is 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.

harm neighbors, our waterways, and our air and diminish the quality of life for people living nearby. In fact, Smithfield’s model will increase the concentration of harmful pollutants stored in lagoons with a history of leaking and overflowing, and will increase the risk that land-applied waste contaminates ground and surface waters, further threatening the rivers and streams of eastern North Carolina. The environmental and public health harms caused by Smithfield’s primitive waste management system—and which will be exacerbated by Align’s biogas plans—have a discriminatory and disproportionate impact on communities of color in eastern North Carolina.<sup>2</sup>

Smithfield has other options. In Missouri, the Attorney General through litigation forced Smithfield to use cleaner technology at all of its hog operations. This technology uses dry barn scrapers to reduce odors, collects methane for biogas, and employs a nitrification-denitrification system to substantially reduce nutrients and water quality impacts. This technology is economically feasible: Smithfield has converted its hog operations in Missouri and increased overall production since implementing this technology. This system could be the starting point for identifying the minimum requirements of a cleaner, more sustainable system Smithfield must utilize in North Carolina.

Unfortunately, we cannot rely on Smithfield to keep its commitment to you and the citizens of North Carolina. We cannot even rely on Smithfield to police its existing operations. In December, a lagoon at a Smithfield contract hog operation in Jones County ruptured, dumping over a million gallons of raw hog waste into a nearby creek and the Trent River. Smithfield’s contract grower was issued a notice of deficiency for violating lagoon safety standards in February, and notice of violation in November, and was operating with an invalid certification.

It is time for change. In November 2020, the Fourth Circuit Court of Appeals upheld jury verdicts finding Smithfield liable for noxious odors, the presence of flies and buzzards, disruptive and polluting truck traffic, and other nuisance conditions at its hog operations using the lagoon and sprayfield system. One judge wrote, “[i]t is past time to acknowledge the full harms that the unreformed practices of hog farming are inflicting” on people and the environment.

---

<sup>2</sup> The 2014 Title VI complaint filed with the U.S. Environmental Protection Agency (“EPA”) by the North Carolina Environmental Justice Network, the Rural Empowerment Association for Community Help, and Waterkeeper Alliance demonstrated that the N.C. Department of Environmental Quality’s (“DEQ”) permitting program for industrial swine operations has a racially discriminatory impact on Black, Latinx and Native American North Carolinians. In 2017, the EPA External Office of Civil Rights responded to the complaint with a “Letter of Concern” to DEQ recommending that the agency “[c]onduct an assessment of current mitigation technologies that would satisfy [DEQ’ s] performance criteria for new or expanding industrial swine operations and what if any impediments exist to adopting those technologies.” Letter from Lilian Dorka, EPA, to William Ross, DEQ (Jan. 12, 2017).

The Agreement states “the Attorney General has concluded that the public interest will be served by the development and implementation of environmentally superior swine waste management technologies.” The Agreement vests enforcement with the Attorney General. This is a defining moment. Smithfield’s biogas proposal will lock-in the lagoon and sprayfield system and all of the harm it causes to our rivers, streams, air quality, and neighbors for decades to come. Please hold Smithfield to its commitment in the Agreement to clean up its mess and use environmentally superior technology in managing its waste.

Sincerely yours,

Derb S. Carter, Jr., Director, North Carolina Offices  
Southern Environmental Law Center

Devon Hall, Sr., Executive Director  
Rural Empowerment Association for Community Help

Naeema Muhammad, Organizing Director  
North Carolina Environmental Justice Network

Sherri White-Williamson, Environmental Justice Policy Director  
North Carolina Conservation Network

Carrie Clark, Executive Director  
North Carolina League of Conservation Voters

Erin Carey, Director of Coastal Programs  
North Carolina Sierra Club

Drew Ball, State Director  
Environment North Carolina

Hope Taylor, Executive Director  
Clean Water for North Carolina

Joel Porter, Policy Manager  
Clean Air Carolina

Kemp Burdette, Cape Fear River Watch  
Cape Fear Riverkeeper

Jillian Howell, Pamlico-Tar Riverkeeper  
Katy Hunt, Lower Neuse Riverkeeper  
Matthew Starr, Upper Neuse Riverkeeper  
Sound Rivers

Larry Baldwin, Crystal Coast Waterkeeper  
Coastal Carolina Riverwatch

[signature page continues]

L. Rider, Executive Director  
Coastal Carolina River Watch

Edgar Miller, Executive Director  
Yadkin Riverkeeper

Tom Mattison, Riverkeeper Emeritus  
White Oak New River Alliance

Gray Jernigan, Southern Regional Director  
Mountain True

Brandon Lee, Catawba Riverkeeper  
Catawba Riverkeeper Foundation

Emily Sutton, Haw Riverkeeper  
Haw River Assembly

Rita Frost, Campaigns Director  
Dogwood Alliance

Lior Vered, Ph.D., Policy Advocate  
Toxic Free North Carolina

Allison Johnson, Staff Attorney  
Natural Resources Defense Council

Elizabeth Haddix, Managing Attorney  
Mark Dorosin, Managing Attorney  
Regional Office, Lawyers' Committee for Civil Rights Under Law

Hannah Connor, Senior Attorney  
Center for Biological Diversity

Jessica Culpepper, Food Project Director  
Public Justice

Sally Lee, Deputy Director of Rural Partnerships  
Food Integrity Campaign

Nancy LaPlaca, Principal  
LaPlaca and Associates