

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 EHR 11720

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NORTH CAROLINA ENVIRONMENTAL )  
JUSTICE NETWORK, WATERKEEPER )  
ALLIANCE, INC., and CAPE FEAR )  
RIVER WATCH, )

Petitioners, )

) **SETTLEMENT AGREEMENT**

v. )

NORTH CAROLINA DEPARTMENT )  
OF ENVIRONMENTAL QUALITY, )

Respondent. )

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Petitioners, North Carolina Environmental Justice Network (“NCEJN”), Waterkeeper Alliance, Inc. (“WKA”), and Cape Fear River Watch (“CFRW”) and Respondent, North Carolina Department of Environmental Quality (“DEQ”), (collectively referred to as the “Parties”), hereby enter into this Settlement Agreement (“Agreement”) in order to resolve a matter in controversy between them.

**RECITALS:**

1. On December 6, 2016, Petitioners filed a petition for contested case hearing alleging that Respondent failed to investigate complaints lodged by Petitioners regarding Swine Waste Management General Permit violations.

2. During the pendency of this contested case, Respondent developed the two attached draft internal guidance documents, which address various matters relating to Respondent's investigation of complaints regarding agricultural operations. *See* Attachment 1, DWR Standard Operating Procedures for Animal Feeding Operations Complaint Response; and Attachment 2, DWR Memorandum for Regular Posting of Information.
3. Respondent's adoption of these internal guidance documents resolves the matters raised in the petition for contested case hearing.

**IT IS THEREFORE AGREED BY THE PARTIES THAT:**

1. In order to avoid the cost and delay of further litigation, the parties have entered into this Agreement and have agreed that all parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.
2. Within 10 days of Petitioners' Voluntary Dismissal of their Petition, DEQ will adopt, through its Division of Water Resources ("DWR"), both of the attached internal management guidance polices.
3. It is understood and agreed that the actions taken pursuant to the terms of this Agreement are not to be construed as an admission of liability by Respondent and that this Agreement is a compromise of disputed claims.

This the 15<sup>th</sup> day of December, 2017.

**RESPONDENT NORTH CAROLINA DEPARTMENT OF ENVIRONMENT QUALITY,  
DIVISION OF WATER RESOURCES**

By: 

Date: December 15, 2017

**PETITIONER NORTH CAROLINA ENVIRONMENTAL JUSTICE NETWORK**

By: Naeema Muhammad

Date: December 15, 2017

**PETITIONER <sup>WATERKEEPER</sup> WATER KEEPER ALLIANCE, INC.**

By: 

Date: December 15, 2017

**PETITIONER CAPE FEAR RIVER WATCH**

By: Kemp Burdette

Date: December 15, 2017

**COMPLAINT RESPONSE – DRAFT**  
**DWR – ANIMAL FEEDING OPERATIONS**  
**STANDARD OPERATING PROCEDURE (SOP)**  
**December 22, 2017**

Complaints regarding animal feeding operations, dry litter poultry operations, or any agricultural operation should be addressed in accordance with this SOP and the current Performance Expectations document.

**NOTE:** [G.S. 143-215.9D](#) (2014-H366) states that complaints against “agricultural operations” and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records unless and until a determination of a violation has occurred. Development of Administrative Code to implement the statutes is underway, and modification to this SOP may be needed once rules are finalized. This SOP is intended to be used by DWR staff to provide consistent protocol for the assessment and investigation of third-party complaints related to animal operations. This SOP will help the regulated community better understand DWR’s protocol for responding to such third-party complaints and provide members of the public who live and work near animal operations with more information regarding the Division’s efforts to protect their health, safety, and the environment.

This SOP applies to DWR’s assessment and investigation of third-party complaints that relate to potential violations of applicable laws, rules, or permitting requirements at agricultural operations, including animal operations. This guidance also applies to any records that are accumulated in conjunction with the Division’s assessment and investigation of such complaints.

Until rules are promulgated, the Division is taking the following positions to allow for continued operations in a consistent manner.

- Inspectors may share with the landowner/facility representative that a complaint has been made as well as observations made during the investigation.
- Inspectors may not share with the landowner/facility representative the identity of the complainant.
- Investigation not related to the complaint will be addressed as a separate investigation and is not subject to G.S. 143-215.9D.
- Determination of a violation is made by a delegated Supervisor upon consideration of all information and data related to the investigation.

If you are not certain the complaint is about an “agricultural operation”, ask your supervisor for guidance.

## 1 - Receive Complaint

Complaints are typically routed to the Regional Office that serves the county where the incident is located. DWR staff should inform complainants that they have the option to remain anonymous.

Ideally, all complaints would be entered into the online BIMS Incident Portal when they are received. The Division is working on improvements for the BIMS Incident Portal to ensure that such complaints can be kept confidential and meet Statutory requirements. BIMS Incident Portal is the preferred method for tracking incidents; however, until the BIMS Incident Portal is updated, Regional Office supervisors and staff **must temporarily use an “off-line” tracking sheet** that records necessary information. The tracking sheet shall include a description of the complaint, date received, date investigation began, date closed, complaint location, responsible party or permit number, inspector name, inspection(s) conducted, result of complaint investigation, and any other notes deemed appropriate (essentially the information normally entered into the portal). All complaint data must also be readily available to WQROS Central Office staff when requested.

Once a violation has been determined for a complaint, the inspector must then enter the incident into the BIMS Incident Portal as described in the following steps. Complaint tracking numbers generated by the Incident Portal will provide the public a reference for requesting public records regarding a specific complaint.

The following are necessary steps for entering a complaint into the online Incident Portal (See the provided example at the end of the document).

- From the pull-down menu, select: Task – Incidents – Enter Incident
- For Incident Type, select Complaint
- Before a new Incident can be entered, you must SEARCH to see if it is already in the system. If County, Facility, Farm Number, etc is KNOWN, enter this information. Hit the Search button.
- Select the appropriate Incident from the list or create a new Incident if one matching the current Incident is not listed.
- Complete First Screen of Incident as much as possible. If person filing complaint wishes to remain anonymous, then check that box and it will grey out those fields. **DO NOT make any record of the complainant’s name or contact information if they ask for their name to be confidential or anonymous.**
- Enter Start Date/Time, which is when the incident was first observed by the complainant.
- Enter the Permit Number (if known). The Incident will automatically populate as an Incident under the Incidents Tab for that Permit in the BIMS Database. and the full Incident Report becomes available in BIMS.

## 2 – Investigate Complaint

Inspectors shall initiate investigations of complaints according to the timelines set forth below, and shall make every effort to complete investigations so that a Determination of Violation can be made within seven (7) business days.

“Investigations” may include, but is not limited to, assessment, record review, telephonic or in-person interviews, and on-site inspection. Unless the complaint has already been found to be frivolous or filed in bad faith, site visits may be necessary to conduct a complaint investigation. In determining whether a complaint is frivolous or filed in bad faith, staff should consider the facts alleged and any supporting documentation submitted by the complainant.

DWR staff shall conduct site visits in the timeframes set forth below when necessary and practicable considering weather conditions, activities at the animal operation, and other conditions occurring at the time of the complaint.

- For complaints alleging facts that present an immediate threat to the environment or human safety or health, inspectors shall initiate an investigation and conduct any site visit **within 24 hours** of DWR’s receipt of the complaint. Investigations shall include a site visit.
- For all other complaints, inspectors shall initiate an investigation within **one business day** of DWR’s receipt of the complaint and conduct any site visit within **five business days** of the completion of the initial investigation of the complaint.
- On-site inspections may be unannounced. In determining the appropriate amount of notice to be given before conducting an inspection, staff should exercise professional judgment in considering the nature of the alleged violation and the potential for concealment.

When determining whether a complaint alleges facts that present an immediate threat to the environment or human health, staff shall consider, among other appropriate factors, the following:

- Whether the facts alleged reasonably indicate that animal waste has entered, or will likely enter, surface or ground water.
- Whether the facts alleged reasonably indicate that capacity, structural, application, or other deficiencies within an animal operation’s animal waste management system have caused, or threaten to cause, animal waste to leave the property of the animal operation.
- The proximity of the animal operation to residential properties, water supply wells, or waters of the state.

To ensure on-site inspections are conducted in a manner consistent with General Statutes the following shall be considered:

- Inspector may notify landowner or facility contact that a complaint has been made on their facility, but may not reveal identity of complainant. The inspector should take precaution to not provide information about the complaint that would identify who filed it.
- The inspector should notify the landowner or facility contact that documentation concerning their complaint investigation is confidential unless a violation related to the complaint is determined. **This also means that you do NOT give a copy of the inspection form to the landowner until a violation has been determined.**
- The inspector shall notify the landowner or facility representative when the complaint investigation has been completed and if/when an unrelated investigation or inspection has started. Information gathered as part of the separate investigation/inspection is not confidential. Inspectors are encouraged to conduct any necessary investigation or site inspection to best utilize their time.
- A separate inspection form shall be used if the inspector decides to conduct investigation/inspection unrelated to the complaint.

- Inspector should be prepared to take photographs, review records, or collect samples as required based on the complaint type. Evidence such as photographs, video recordings, and other documentation submitted by third parties shall also be considered. The inspector shall exercise professional judgment in determining the reliability of all evidence.
- When completing an inspection form, the inspector shall document findings. Determination of violation will be made by a delegated supervisor upon consideration of all information, data, and supporting documentation related to the investigation.
- Follow up inspections as needed.

### **3 – Document Complaint Investigation (Online Incident Portal) – for complaints with confirmed violations**

Complete documentation of complaint investigations is necessary both in the Online BIMS Incident Portal and in regular Production BIMS. By completing the Online BIMS record for each incident, the Division has the ability to track incidents, staff responsiveness, findings, and related enforcement actions if any. All information entered into the Online Incident Portal will automatically update the Incidents for that Permit in the BIMS Database.

- The Inspector investigating the Complaint shall complete the Incident Details 1 and Incident Details 2 pages of the Incident Portal. Include any field notes as needed.
- If other agencies are consulted, complete the Agency tab.
- Complete the Materials Categories Tab.
- Track actions taken in the Events Tab. If an inspection was done, Add the event “Inspection or Site Visit Conducted”. This is key to the incident record, but does not go toward “counting” the inspections for statutory compliance.
- Only information related to the complaint shall be included in the incident report.
- Information gathered as part of unrelated investigation shall be entered as an inspection in Production BIMS (below)

### **4 – Document Inspection(s) (Production BIMS)**

The full inspection report is a vital part of the incident record and the permit record. *Also, entering the inspection into BIMS is the **ONLY WAY to ensure that all inspections conducted are counted.*** Complaint Inspections at non-permitted sites must be tracked by the Region and reported to the WQROS Central Office at a frequency to be determined by the Director.

- IF A VIOLATION IS CONFIRMED RELATED TO THE COMPLAINT: The Inspector shall enter every Complaint Inspection for which a violation was determined to have occurred in the BIMS database for permitted facilities. For non-permitted facilities, the inspector must create a deemed permit number to enter the complaint inspection and generate the necessary enforcement action.
- IF NO VIOLATIONS ARE FOUND RELATED TO THE COMPLAINT: Do not enter complaint inspections when no violation has been determined. The inspection *shall temporarily be documented in the “off-line” tracking sheet described in item #1. Receive Complaints.* Once BIMS has been updated to address confidentiality, the inspector must enter the inspection into the BIMS as a “Compliance Inspection” and check “Complaint” as the Reason for the Inspection.
- The Inspector shall enter any Inspection not related to the complaint as a separate inspection in the BIMS database for permitted facilities.

- Use key words when possible, particularly when related to a major event. For example, “Poultry”, “Uncovered Stockpile”, “Hurricane \_\_\_”, “Discharge to \_\_\_”, “Lagoon”, “Odor”, “NOD/NOV Issued”.
- **If a violation is determined and the delegated supervisor elects to proceed with enforcement:** Create the NOD or NOV in BIMS. Draft and issue the NOD/NOV, include a copy of the original inspection report form with the NOD/NOV. Please note that the determination that a violation has occurred is distinct from DEQ’s subsequent decision regarding the appropriateness of any notification of non-compliance or other enforcement action following the completion of an investigation.

## 5 – Close Complaint Investigation

Closure of the Complaint Investigation includes the completion and filing of all paper and electronic documentation. When the records do not reflect that the investigation has been closed, it often leads to questions as to the completeness of the record and if the incident is active.

- Complete investigation by proceeding with appropriate enforcement action, if any.
- Be sure to Close the Incident in the Incident Portal.
- Place all complaint investigation documents into either the Confidential complaints file for that facility (if no violations were found) or in the Facility’s Permit File (if a violation was documented). This may include copies of field notes; if you do make copies from a field notebook, be sure to record the inspector’s name, notebook volume, dates, and page number from the book should questions arise in the future.
  - All documents and records considered by DEQ in making the determination of a violation shall be a part of the complaint file. Should a violation be determined to have occurred, the complaint file will be a public record and made available to the public pursuant to G.S. 143-215.9D and subject to a Public Records Request.
  - Records for facilities with no permit number shall be kept in a general file for each county. There should be a Confidential and a Public general file for each county.

## Example BIMS Incident Portal Entry

Following is an example of an actual complaint entered into the BIMS Incident Portal. Since an NOV was issued as a result of this complaint, it is public record and this SOP is in compliance with G.S. 143-215.9D.

First is a screen shot from the Incident Portal. This shows what the inspector entered into the Portal.

The screenshot displays the BIMS (Basinwide Information Management System) web interface. The browser address bar shows the URL <http://bimsportal.ncdenr.org/7001/login.do>. The page header includes the BIMS logo and navigation links for Tasks, Queries, Administration, and Help. The main content area features a tabbed interface with the following tabs: Incident Details1, Incident Details2, Agencies, Material Categories, Events, Related Incidents, and Action History. The 'Incident Details1' tab is active, showing a form for entering incident information. The form includes the following fields and values:

- Incident Type:** Complaint
- Category:** APS - Animal
- Incident Number:** 201602305
- Started Date/Time:** 08/29/2016 01:00 pm
- County:** Haywood
- Farm #:** AWC440013
- Latitude:** 35.5683 (Decimal) / 35.34.06 (DD:MM:SS)
- Longitude:** 83.03 (Decimal) / 83.01.48 (DD:MM:SS)
- Position Accuracy:** Unknown
- Position Method:** Remote Sensing
- Position Datum:** Unknown
- Reporting Person:** Anonymous (checked), First Name: Shane, Middle Name: , Last Name: Kovacevich
- Address:** 98 Nottingham Ln, City: Waynesville, State/Zip: NC 28785, Cell/Pager:
- Phone:** (828)400-7116
- \* Location of the Incident:** Ben & Marie Ross residence, Address: 1139 Beantown Rd, City/State/Zip: Waynesville NC 28786
- Cause/Observation of the incident:** On September 30, 2016, I received a phone call from [redacted]
- Directions:** From exit 55, follow I-40 west for approximately [redacted]
- Action Taken:** I (Brett Laverty) investigated the complaint and issued a Notice of Violation (NOV) for illegal discharge of animal waste.
- Comments/Findings:** The parcel (PIN#8608-18-5775) is listed as agricultural and is zoned for agricultural use.
- Water Supply Wells within 1500ft:** Yes (selected), No, Unknown
- Groundwater Impacted:** Yes, No, Unknown (selected)
- Surface Water Impacted:** Yes, No (selected), Unknown

### Example BIMS Incident Portal Entry

This is a screen shot of the BIMS Permit Incident Tab. This incident was created when the Permit Number was entered in the Incident Portal for incident number 201602305.

The screenshot shows a software window titled "Find Permit" with a close button in the top right corner. The window contains a series of tabs at the top: "Related Permits", "Wells", "Fields", "Sites", "Comments", "History", "Inspections", "Incidents" (which is selected), "Enforcements", and "Violations". Below these are more tabs: "Details 1", "Details 2", "Billing", "Class./Desig.", "Events", "Reg. Activities", "Reg. Operations", "Structures", "Affiliations", and "Reviewers".

Below the tabs, there are three input fields: "Permit: AWC440013", "Version: 2.0", and "Status: Active".

A table is displayed with the following data:

Start Date	Number	Type	Entered By	Comment	Location
2016-08-29 13:00:...	201602305	Complaint	brett.lavery		Triple R Dairy Farm

At the bottom right of the table area is a "Details..." button. At the bottom of the window are four buttons: "< Back", "Next >", "Finish", and "Close".

The status bar at the very bottom of the window displays "1 Incident found.", "Ready", and "SID: PMIC".

### Example BIMS Incident Portal Entry

This is a screen shot of the Incident Details in BIMS. Data comes directly from the Incident Portal and is not reentered in BIMS.

The screenshot shows a software window titled "Find Incident" with a close button (X) in the top right corner. The window contains several tabs: "Incident Details 1A", "Incident Details 1B", "Incident Details 2A", "Incident Details 2B", "Agencies", and "Material Categories". The "Incident Details 1A" tab is active.

The form fields are as follows:

- Incident Type: Complaint
- Incident #: 201602305
- Start Date/Time: 08/29/2016 01:00 PM
- City: Waynesville
- County: Haywood
- Reporting Person:  Anonymous
- First Name: Shane
- Address: 98 Nottingham Ln
- Middle Name: (empty)
- Last Name: Kovacevich
- City: Waynesville
- State/Zip: NC 28785
- Phone: (828)400-7116
- Cell/Pager: (empty)
- Location of the Incident: Ben & Marie Ross residence

Text areas:

- Cause/Observation of the incident:** Contains a text area with a scrollbar. The text reads: "Concerns that while he was turning the waste application one of the drivers began applying the liquid waste in close proximity to his property line and residence. Mr. Kovacevich provided a copy of the video evidence (MVI\_0579.AVI) to this office."
- Directions:** Contains a text area with a scrollbar. The text reads: "From exit 55, follow I-40 west for approximately 35 miles. Take exit 20 and follow U.S. 276 south for 3 miles. Turn right on to Beantown Road. The field is approximately 0.7 miles on the right."
- Action Taken:** Contains a text area with a scrollbar. The text reads: "I (Brett Lavery) investigated the complaint on the afternoon of September 30, 2016."
- Comments/Findings:** Contains a text area with a scrollbar. The text reads: "equivalent practices as specified in the facilities Certified Animal Waste Management Plan near feedlots, manure and feed storage areas, and land application areas. The required corrective action included immediately adhering to all buffer setback requirements and updating their Waste Utilization Plan to include the fields on Beantown Road (PIN#8608-18-5775)"

At the bottom of the window, there are buttons for "Help", "< Back", "Next >", "Finish", and "Close". The status bar at the very bottom shows "Ready" and "SID: INDT".

December 22, 2017

**MEMORANDUM**

**To:** Bridgette Munger, Public Information Officer  
Jon Risgaard, WQROS Chief

**From:** Linda Culpepper, Interim Director

**SUBJECT:** Regular Posting of Information on Complaints Related to Agricultural Activities.

**Issue**

[G.S. 143-215.9D](#) (2014-H366) states that complaints against “agricultural operations” and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records unless and until a determination of a violation has occurred. However, concerns have been raised concerning access to information related to the Departments response to complaints related to “agricultural operations”.

The Division is working on improvements for the BIMS Incident Portal to ensure that such complaints can be kept confidential and meet Statutory requirements. BIMS Incident Portal is the preferred method for tracking incidents; however, until the BIMS Incident Portal is updated, Regional Office supervisors and staff must temporarily use an “off-line” tracking sheet that records necessary information.

This memo is to provided Division Staff an understanding of expectations for staff to provide regular updates to the public via the Division Website consistent with the Statute, and be effective when BIMS updates are complete.

**Regular Posting of public information related to agricultural operation complaints.**

Division PIO will be responsible for posting to the Division’s website a summary list of complaints for agricultural operations where a violation related to the complaint has been determined.

The List will be updated at least Monthly and will include at least the following information to aid the public in requesting additional information from the Division.

- Incident number
- Date Received
- County
- Regional Office
- Address of Incident
- Permit or deemed permit number

Regular Posting of Information on  
Complaints Related to Agricultural  
Activities.

The list will include all agricultural operation incidents where a violation has been determined that have occurred over the previous 6 months. The webpage will provide information or links to regional office contact information.

The Division will also post aggregate data covering the previous 6 months for complaints related to agricultural operations on a quarterly basis. This information will include at least the following:

- Total number of complaints received
- Total number of complaints investigated
- Total number of complaints where a violation was determined

In the same location, the Division will post its annual report to the Environmental Review Commission and Fiscal Research Division on the permitting, inspection, and compliance activity of animal waste operations across the state.

To automate reporting expectation, the Division will develop electronic recording and tracking tools for the incident data that meets the confidentiality requirements of G.S. 143-215.9D.

G.S. 143-215.9D also directs the Department to development of Administrative Code to implement the statutes. Development of Administrative Code is underway, and modification to this memo may be needed once rules are finalized.

cc: Debra Watts – Water Quality Regional Operations Section  
DWR Central Files