

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 17 CVS 09342

WATERKEEPER ALLIANCE,

Plaintiff,

v.

STEVEN TROXLER, as Commissioner of the
North Carolina Department of Agriculture and
Consumer Services,

Defendant.

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

WHEREAS, on January 20, 2017, Waterkeeper Alliance (“Waterkeeper”) submitted a public records request to the Department of Agriculture & Consumer Services (“NCDA&CS”), asking to inspect certain records in the possession of NCDA&CS including (1) all records, including all communications with the U.S. Environmental Protection Agency, U.S. Department of Agriculture, the Federal Emergency Management Agency, any state agency, or any municipal or county government, generated as part of NCDA&CS’s review of, consultation regarding, or response to flooding of animal agricultural operations in North Carolina as a result of Hurricane Matthew, and (2) all records related to any emergency response or preparedness plan, proposal, strategy, suggestion, or other response resulting from any storm-related flooding of any animal agricultural operation in North Carolina as a result of flooding from Hurricanes Matthew, Floyd, Bonnie, or Fran; and

WHEREAS, on June 7, 2017, NCDA&CS provided Waterkeeper with the Department’s Production Number One, consisting of approximately 7.18 Gigabytes of responsive documents, along with an invoice of \$2,038.50 for 117.25 hours spent gathering the information Waterkeeper requested; and

WHEREAS, on July 31, 2017, Waterkeeper filed a civil action in Wake County Superior Court, designated as file number 17 CVS 09342, seeking to compel NCDA&CS to produce the public records for inspection without unlawfully charging fees; and

WHEREAS, on August 14, 2017, NCDA&CS provided Waterkeeper with the Department’s Production Number Two, consisting of approximately 3.74 Gigabytes of responsive documents; and

WHEREAS, on September 6, 2017, NCDA&CS filed a motion to dismiss Waterkeeper’s claims; and

WHEREAS, on September 18, 2017, NCDA&CS provided Waterkeeper with the Department's Production Number Three, consisting of approximately 3.11 Gigabytes of responsive documents; and

WHEREAS, counsel for both parties engaged in settlement negotiations in an attempt to resolve the differences between them; and

WHEREAS, Waterkeeper and NCDA&CS (hereinafter, the "Parties") now wish to avoid the costs and expense of litigation and resolve this litigation on mutually agreeable terms.

THEREFORE the Parties hereby agree as follows:

1. Policy. NCDA&CS has withdrawn the \$2,038.50 invoice and updated its public records policy to reflect that, absent a change in law, NCDA&CS will not charge any fee or special service charge for the inspection or examination of public records.

2. Continued Compliance with the Public Records Act. NCDA&CS will continue to provide Waterkeeper with access to all records requested in Waterkeeper's January 20, 2017 public records request as soon as the remaining records can be reviewed to redact confidential information. NCDA&CS will not charge any fee for the release of these documents.

3. Litigation Costs. NCDA&CS will reimburse Waterkeeper's Attorney, the Southern Environmental Law Center ("SELC"), for the \$200 filing fee associated with the commencement of this action and SELC's \$487.50 share of the mediation fee. The parties will otherwise bear their own costs and attorney's fees.

4. Donation. NCDA&CS will make a donation of \$2,000 to the Sunshine Center of the North Carolina Open Government Coalition.

5. Release. Waterkeeper does hereby fully and forever release, discharge, and waive any and all claims, causes of action, administrative claims or other demand or proceeding of any kind that it may have in relation to the public records request mentioned above. Specifically, this release applies only to the public records request dated January 20, 2017. Upon fulfillment of items 2-4 by NCDA&CS, Waterkeeper shall file a voluntary dismissal with prejudice of those claims asserted against Defendant and NCDA&CS in Wake County file number 17 CVS 09342.

6. No Admission of Liability. The undersigned agree that this Settlement Agreement and Release is a full and complete compromise settlement of a disputed claim and is intended merely to terminate any and all claims relating to the public records request and avoid litigation among the parties to this Agreement. Payment of the donation and other costs by NCDA&CS is not to be construed as an admission of liability, and NCDA&CS expressly denies that it is liable.

7. Full Cooperation. The parties agree to cooperate fully, to execute any and all supplementary documents necessary to effectuate this Agreement, and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.

8. Entire Agreement. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.

9. Reading of Agreement. The parties hereby acknowledge that the individual executing the Agreement on its behalf is authorized to execute this Agreement on its behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, fully understands its contents, consents to the settlement of the claim on the terms set forth herein, and does so in reliance upon his own judgment and advice of attorney and not in reliance on any other representations or promises of the opposing party or its representatives or attorneys.

IN WITNESS WHEREOF, this Agreement is executed in as indicated on the subsequent signature pages, this the 4th day of OCTOBER, 2017.

PARTIES

WATERKEEPER ALLIANCE


BY:



Will Hendrick
Staff Attorney

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES

BY: _____


N. David Smith
Chief Deputy Commissioner
North Carolina Department of
Agriculture and Consumer Services