

**PLEASE PRINT CLEARLY OR TYPE**

STATE OF NORTH CAROLINA  
COUNTY OF (1) New Hanover

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

(2) Environmental Justice Community Action Network and Cape Fear River Watch )  
 \_\_\_\_\_ )  
 PETITIONERS, )  
 v. )  
 (3) North Carolina Department of Environmental Quality – Division of Water Resources )  
 \_\_\_\_\_ )  
 RESPONDENT. )  
 (The State agency or board about which you are complaining) )

**PETITION  
FOR A  
CONTESTED CASE HEARING**

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

Environmental Justice Community Action Network and Cape Fear River Watch hereby request a contested case hearing as provided for by N.C. Gen. Stat § 143-215.1 and § 150B-23 to challenge actions of the North Carolina Department of Environmental Quality – Division of Water Resources (DEQ) in issuing Certificate of Coverage No. AWS820005 (Exhibit 1) to Murphy-Brown, LLC’s Kilpatrick Farm 1, 2, 4 & 5 & Merritt Farm on March 31, 2021 for the construction and operation of an animal waste treatment system in Sampson County. The permit authorizes a new anaerobic digester system to generate biogas from swine waste while also authorizing the operation of Murphy-Brown’s dangerous and polluting lagoon and sprayfield system for waste management, which adversely affects water, air, and nearby community members when less polluting technologies for treating and disposing of this waste are practicable. DEQ also failed to evaluate and the permit fails to address cumulative effects of industrial hog operations and agricultural pollution in the Cape Fear River Basin. In issuing this certificate of coverage, DEQ violated its obligations to prevent the violation of water quality standards due to the cumulative effects of permit decisions, and to require the practicable waste treatment and disposal alternative with the least adverse impact on the environment. N.C. Gen. Stat. § 143-215.1(b)(2); 15A N.C. Admin. Code 2T.0105(f).

Environmental Justice Community Action Network, Cape Fear River Watch, and their members are persons aggrieved and substantially prejudiced under N.C. Gen. Stat. § 150B-23 as a result of DEQ’s unlawful issuance of Certificate of Coverage No. AWS820005. Environmental Justice Community Action Network is a North Carolina-based not-for-profit organization with a mission to achieve environmental justice and provide resources to communities who are working to improve the environment where they live, work, and play. Cape Fear River Watch is a not-for-profit organization based in Wilmington, N.C., with a mission to protect and improve the water quality of the Cape Fear River Basin for all people.

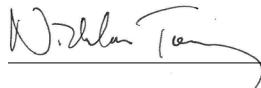
(4) Amount in controversy \$ n/a (if applicable)  
(If more space is needed, attach additional pages.)

(5) Because of these facts, the State agency or board has: (check at least one from each column)  
 \_\_\_\_\_ deprived me of property;  exceeded its authority or jurisdiction;  
 \_\_\_\_\_ ordered me to pay a fine or civil penalty; or  acted erroneously;  
 otherwise substantially prejudiced my rights; **AND**  failed to use proper procedure;  
 acted arbitrarily or capriciously; or  
 failed to act as required by law or rule.

(6) Date: April 29, 2021 (7) Your phone number: (919) 967-1450

(8) Print your full address: 601 Rosemary Street, Suite 220 Chapel Hill, NC 27516  
(street address/p.o. box)(city) (state)(zip)

(9) Print your name: Nicholas S. Torrey

(10) Your signature: 

**You must** mail or deliver a **COPY** of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

### CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed **OR** by delivering it to the named agency or board:

(11) Bill Lane

(name of person served)

(12) N.C. Department of Environmental Quality

(State agency or board listed on line 3)

(13) 217 West Jones Street, Raleigh, NC 27603

(street address/p.o. box) (city) (state) (zip code)

Also served by certified mail:

Brady Stewart, Agent

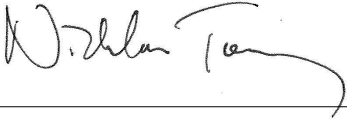
Murphy-Brown LLC

2822 Highway 24 West

Warsaw, NC 28398

(14) This 29th day of April, 2021.

(15)



\_\_\_\_\_

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When you have completed this form, you **MUST** mail or deliver the **ORIGINAL** to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6700.

**This box for OAH use only.**

<p>Amount Paid \$ _____</p> <p>Cash – receipt number _____</p> <p>Money Order    Certified Check    Attorney Trust Account</p> <p>Check number _____</p>	<p>Indigent (must complete form HOI )</p> <p>Mandated federal cause of action</p> <p><b>Received by:</b> _____</p>
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Exhibit 1



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

DIONNE DELLI-GATTI  
Secretary

S. DANIEL SMITH  
Director

March 31, 2021

Murphy-Brown, LLC  
Kilpatrick Farm 1, 2, 4, & 5 & Merritt Farm  
PO Box 856  
Warsaw, NC 28398-0856

Subject: Certificate of Coverage No. AWS820005  
Kilpatrick Farm 1, 2, 4, & 5 & Merritt Farm  
Swine Waste Collection, Treatment,  
Storage and Application System  
Sampson County

Dear Murphy-Brown, LLC:

In accordance with your request to cover the existing primary lagoon and install two mixing/lift stations to collect biogas for a Waste-to-Energy System to service the 13,336 Wean to Finish swine at the Kilpatrick Farm site, we are hereby forwarding to you this Certificate of Coverage (COC) issued to Murphy-Brown, LLC, authorizing the construction and operation of the subject animal waste management system in accordance with General Permit AWG100000. The 5,083 Wean to Finish swine at the Merritt Farm site will continue to be served by the existing lagoon at that site. Please read this COC and the enclosed State General Permit carefully.

This approval shall consist of the operation of this system including, but not limited to, the management and land application of animal waste as specified in the facility's Certified Animal Waste Management Plan (CAWMP) for Kilpatrick Farm 1, 2, 4, & 5 & Merritt Farm, located in Sampson County, with a swine animal capacity of no greater than the following annual averages:

Wean to Finish: <b>18,419</b>	Feeder to Finish:	Boar/Stud:
Wean to Feeder:	Farrow to Wean:	Gilts:
Farrow to Finish:	Farrow to Feeder:	Other:

If this is a Farrow to Wean or Farrow to Feeder operation, there may be one boar for each 15 sows. Where boars are unnecessary, they may be replaced by an equivalent number of sows. Any of the sows may be replaced by gilts at a rate of 4 gilts for every 3 sows.

This COC shall be effective from the date of issuance until September 30, 2024 and shall hereby void the Certificate of Coverage Number AWS820005 previously issued to this facility. Pursuant to this COC, you are authorized and required to operate the system in conformity with the conditions and limitations as specified in the General Permit, the facility's CAWMP, and this COC. An adequate system for collecting and maintaining the required monitoring data and operational information must be established for this facility. Any increase in waste production greater than the certified design capacity or increase in number of animals authorized by this COC (as provided above) will require a modification to the CAWMP and this COC and must be completed prior to actual increase in either wastewater flow or number of animals.



**Within 180 day of issuance of this COC, please review the facility's CAWMP with respect to land application areas in landscape positions that are in close proximity to public roads, dwellings and wells, including but not limited to Pulls 32, and 33. and provide a report to the Division to describe what, if any, additional best management practices are to be implemented in these areas to improve protections and further reduce risk of off-site impacts.**

Please pay careful attention to the record keeping and monitoring conditions in this permit. Please use the most current record keeping forms.

If your Waste Utilization Plan (WUP) has been developed based on site-specific information, careful evaluation of future samples is necessary. Should your records show that the current WUP is inaccurate you will need to have a new WUP developed.

The issuance of this COC does not excuse the Permittee from the obligation to comply with all applicable laws, rules, standards, and ordinances (local, state, and federal), nor does issuance of a COC to operate under this permit convey any property rights in either real or personal property.

Per 15A NCAC 02T .1304 and NRCS standards a 100-foot separation shall be maintained between water supply wells and any lagoon, storage pond, or any land application of waste.

Please be advised that any violation of the terms and conditions specified in this COC, the General Permit or the CAWMP may result in the revocation of this COC, and/or penalties in accordance with NCGS 143-215.6A through 143-215.6C including civil penalties, criminal penalties, and injunctive relief.

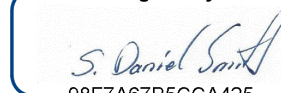
If any parts, requirements, or limitations contained in this COC are unacceptable, you have the right to apply for an individual permit by contacting the Animal Feeding Operations Program for information on this process. Unless such a request is made within 30 days, this COC shall be final and binding.

In accordance with Condition II.23 of the General Permit, waste application shall cease within twelve (12) hours of the time that the National Weather Service issues a Hurricane Warning, Tropical Storm Warning, or a Flood Watch/Flash Flood Watch associated with a tropical system for the county in which the facility is located. You may find detailed watch/warning information for your county by calling the Raleigh, NC National Weather Service office at (919) 326-1042, or by visiting their website at: [www.weather.gov/rah/](http://www.weather.gov/rah/)

This facility is located in a county covered by our Fayetteville Regional Office. The Regional Office staff may be reached at (910) 433-3300. If you need additional information concerning this COC or the General Permit, please contact the Animal Feeding Operations Program staff at (919) 707-9129.

Sincerely,

DocuSigned by:



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S. Daniel Smith

Director, Division of Water Resources

Enclosures (General Permit AWG100000)

cc: (Certificate of Coverage only for all ccs)  
Sampson County Health Department  
Sampson County Soil and Water Conservation District  
Smithfield Hog Production  
William G. "Gus" Simmons, Jr., P.E., Cavanaugh Solutions  
Laserfiche – Permit File No. 820005

