

AGREEMENT

This AGREEMENT is made this 25th day of July, 2000, by and 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.

WHEREAS, Brown's of Carolina, Inc.; Carroll's Foods, Inc.; Murphy Farms, Inc.; Carroll's Foods of Virginia, Inc.; and Quarter M Farms, Inc. (collectively, the "Subsidiaries") are subsidiaries of Smithfield Foods, Inc. ("Smithfield") (collectively, the "Companies"). The Subsidiaries are North Carolina corporations engaged in raising hogs on farms they individually own and operate. The Subsidiaries also contract individually with independent farmers to raise their hogs. Smithfield owns all of the outstanding stock of the Subsidiaries, but does not itself raise any hogs in North Carolina.

WHEREAS, the Attorney General is acting pursuant to his authority under Chapter 114 of the General Statutes and enters into this Agreement after consulting with the North Carolina Department of Environment and Natural Resources ("DENR").

WHEREAS, hog production and a clean and safe environment are important to the farming community and economy of North Carolina.

WHEREAS, the current anaerobic lagoon and sprayfield system for swine waste management employed by the Subsidiaries and other hog producers in North Carolina is currently authorized and permitted under State law and the Companies believe it is currently the best available technology for swine waste management; however, the Attorney General has concluded that the public interest will be served by the development and implementation of environmentally superior swine waste management technologies appropriate to each category of hog farms in North Carolina.

WHEREAS, the Companies are in a leadership position to provide the financial and technical resources needed to develop Environmentally Superior Technologies for the management of swine waste in North Carolina because, together, the Subsidiaries are the largest pork producers in the State under common ownership. Accordingly, the Companies have agreed to lead the development and implementation of environmentally superior swine waste management technologies in North Carolina.

WHEREAS, the Companies are committed to working cooperatively with the Attorney General to develop and implement Environmentally Superior Technologies in consideration of the Attorney General's commitment to use the full power and authority of his office to diligently pursue expeditious implementation of Environmentally Superior Technologies appropriate to each category of hog farm requiring permits under North Carolina law, regardless of ownership or operational control of the farms.

WHEREAS, the Attorney General and the Companies agree that pending development and implementation of Environmentally Superior Technologies, the Companies should undertake a series of environmental initiatives intended to preserve and enhance water quality in eastern North Carolina.

WHEREAS, the Companies have entered into this binding Agreement freely for the purpose of memorializing the commitments they have voluntarily agreed to undertake in consideration of the Attorney General's actions.

NOW, THEREFORE, the Attorney General and the Companies agree as follows:

I. SUMMARY OF COMMITMENTS BY THE COMPANIES

Subject to the terms of this Agreement, and in consideration of the Attorney General's commitments herein, the Companies agree to: (1) undertake immediate measures for enhanced environmental protection on Company-owned Farms and provide assistance to Contract Farmers in undertaking these same measures; (2) commit \$15 million for the development of Environmentally Superior Technologies for the management of swine waste and to facilitate the development, testing, and evaluation of potential technologies on Company-owned Farms; (3) install Environmentally Superior Technologies on each Company-owned Farm in North Carolina and provide financial and technical assistance to Contract Farmers for the installation of these technologies; (4) commit \$ 50 million to environmental enhancement activities; (5) cooperate fully with the Attorney General to ensure compliance with applicable laws, regulations, policies and standards; and (6) in cooperation with the Attorney General and all other interested parties, take a leadership role in enhancing the effectiveness of the Albemarle-Pamlico National Estuary Program; all as set out below.

II. DEFINITIONS

- A. Company-owned Farms. Any farm or farms in North Carolina owned or operated by one of the Companies.
- B. Contract Farms or Farmers. Any farm or farms in North Carolina owned or operated by an independent farmer under contract with one of the Subsidiaries for the production of hogs.
- C. Environmentally Superior Technology or Technologies. Any technology, or combination of technologies that (1) is permissible by the appropriate

governmental authority; (2) is determined to be technically, operationally, and economically feasible for an identified category or categories of farms as described in Section III. B.; and (3) meets the following performance standards:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;
2. Substantially eliminate atmospheric emissions of ammonia;
3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;
4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens; and
5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

D. Technology Determination. A written determination pursuant to Section III.B. of this Agreement which contains (1) a finding that a technology or combination of technologies is an Environmentally Superior Technology or Technologies; (2) an identification of the category or categories of farms covered by the determination; (3) a determination (made in consultation with DENR) that the technology or technologies are capable of being permitted by DENR and any other appropriate governmental authority; and (4) a schedule for implementation of the Environmentally Superior Technology or Technologies as soon as possible.

III. SUBSTANTIVE PROVISIONS

A. IMMEDIATE MEASURES FOR ENHANCED ENVIRONMENTAL PROTECTION.

1. The Companies agree to submit to the Attorney General plans which provide for the following:
 - a. On or before November 15, 2000, a plan which identifies those Company-owned Farms with buildings or lagoons located in the 100 year flood plain on current maps, and a description (together with expeditious implementation schedules) of proposed measures to protect the waters of the State from the effects of flooding.
 - b. On or before October 15, 2000, a plan which identifies those Company-owned Farms that have the potential to adversely impact water quality due to deficient site conditions or operating practices and a description (together with expeditious implementation schedules) of proposed measures to correct such deficiencies or operating practices.
 - c. On or before January 15, 2001, a plan for identifying wetlands, and natural areas on Company-owned Farms that protect water quality, and a description (together with expeditious implementation schedules) of proposed measures to protect such areas, including conservation easements for such areas on Company-owned Farms.
 - d. On or before December 15, 2000, a plan which identifies all abandoned lagoons on Company-owned Farms and a description

(together with expeditious implementation schedules) of proposed measures for closure of the lagoons on Company-owned Farms in accordance with current NRCS and DENR standards and consistent with DENR's most current priority list.

- e. On or before September 15, 2000, a plan which provides for adoption of environmental management systems for Company-owned Farms sufficient to attest compliance with the ISO 14000 series of voluntary standards governing environmental management systems, including provisions for obtaining certification from an independent and accredited registrar. The plan will also include proposed implementation schedules for the Company-owned Farms.
2. The parties recognize that preparation and implementation of similar plans with respect to Contract Farms will require the consent and participation of the Contract Farmers as well as financial and technical assistance by the Companies. The Companies agree to provide such assistance to participating Contract Farmers as may be needed for the preparation and implementation of plans meeting the goals and objectives of paragraph 1 above with respect to Contract Farms.
3. The Attorney General will review the plans submitted pursuant to paragraph 1 above in consultation with DENR and any groups or individuals the Attorney General deems appropriate, and will approve or disapprove each plan in whole or in part within 60 days of submittal. In the event the Attorney General fails to either approve or disapprove a plan within 60 days of submittal, the plan will be deemed to be approved. If the

Attorney General disapproves a plan or any portion of a plan, he will state the reasons for his disapproval and describe his proposed revisions. Within 30 days after receiving notice of disapproval from the Attorney General, the Companies will make the proposed revisions to the plan or notify the Attorney General that they disagree with the disapproval and invoke the dispute resolution provisions of Section IV.B. of this Agreement.

4. The Companies will implement plans submitted and approved pursuant to this Section III.A. in accordance with the approved schedules.

B. DEVELOPMENT OF ENVIRONMENTALLY SUPERIOR TECHNOLOGIES

1. The parties agree that the Chancellor of North Carolina State University (“NCSU”) will designate an individual with appropriate expertise (hereinafter, the “Designee”), and that the Designee will be responsible for the identification and development of Environmentally Superior Technologies; will be the final authority in the selection, installation, operation, and evaluation of technology alternatives; and will make all Technology Determinations. The parties acknowledge that the Chancellor has designated Dr. C. M. Williams, Director of the NCSU Animal and Poultry Waste Management Center, to fill this role. If for any reason the Designee is unable or unwilling to exercise the authority and responsibility conferred upon him by this Agreement, the parties agree that his replacement will be selected by the Chancellor in consultation with the President of the University of North Carolina System, the Attorney General and the Companies. The Companies hereby release the Designee from any and all liabilities associated with the performance of the responsibilities conferred upon him by and within the scope of the Agreement.

2. The parties understand that in the course of exercising the authority and performing the responsibilities conferred upon him by this Agreement, the Designee will consult with and seek the advice of experts in animal waste management as well as those with an interest in the development of Environmentally Superior Technologies, including, but not limited to, DENR, environmental interests, swine industry representatives, agricultural interests, and technology suppliers and vendors. This process will include, without limitation, the appointment by the Designee of a peer review panel that will include representation by 1) experienced researcher(s) in the area of animal waste management, 2) experienced researcher(s) in the areas of environmental science and public health, 3) DENR, 4) environmental and community interests, 5) swine agribusiness interests, including a representative from one of the Companies, and 6) faculty from the University of North Carolina system with expertise in business management. This panel will include balanced representation from interested parties and will be chaired by the Designee. Each panel member may fully participate in the process and advise on the selection, installation, operation and evaluation of potential Environmentally Superior Technologies. However, final authority in the selection, installation, operation, and evaluation of technologies and all Technology Determinations will remain the sole responsibility of the Designee. The panel will hold semi-annual public meetings for the purpose of providing information about the progress of identifying and installing potential Environmentally Superior Technologies, data collected from each technology, economic analyses, identification of the Environmentally Superior Technologies, and the progress of implementation.

3. If requested by the Designee, the Companies agree to make available Company-owned Farms to facilitate the development, testing, and evaluation of potential technologies. With the consent of a Contract Farmer, the Designee may also site technologies on a Contract Farm. The Companies recognize that the Designee intends to select five technologies for installation beginning immediately, with an additional five to six technologies within six months of the Agreement, and additional or modified technologies thereafter as appropriate.

4. Determination of economic feasibility.
 - a. The parties understand and agree that the Designee will conduct an economic analysis to evaluate the economic feasibility of alternative technologies and their application to different categories of farms. In evaluating the economic feasibility of alternative technologies, the Designee will seek the advice of experts in economics, and to that end will appoint and consult with a peer review panel that may include, without limitation, representation by economists representing 1) academia; 2) environmental interests; 3) government; and 4) the swine industry, including a representative of one of the Companies.

 - b. In determining whether it is economically feasible to construct and operate a particular alternative technology for a category of farms, the Designee will consider all relevant information including, but not limited to, the following factors:
 - (i) the projected 10-year annualized cost (including capital, operation and maintenance costs) of each alternative

- technology expressed as a cost per 1000 pounds of steady state live weight for each category of farm system;
- (ii) the projected 10-year annualized cost (including capital, operation and maintenance costs) per 1000 pounds of steady state live weight for each category of farm system of a lagoon and sprayfield system that is designed, constructed and operated in accordance with current laws, regulations, and standards, including NRCS design, construction and waste utilization standards;
 - (iii) projected revenues, including income from waste treatment byproduct utilization, together with any cost savings from the new technology;
 - (iv) available cost-share monies or other financial or technical assistance from federal, state or other public sources, including tax incentives or credits; and
 - (v) the impact that the adoption of alternative technologies may have on the competitiveness of the North Carolina pork industry as compared to the pork industry in other states.
- c. The parties understand and agree that alternative technologies that cost more than the lagoon and sprayfield system may be determined to be economically feasible.
- d. The Companies agree to make available all documents and other information the Designee reasonably determines to be required for the economic analysis. To the extent that documents submitted pursuant to this subsection are public records under North Carolina law, the provisions and procedures in Section III. E. of this

Agreement regarding confidentiality of documents will be followed by the Companies and the Designee.

5. The parties acknowledge that as soon as practical, but in any event within two years of the effective date of this Agreement, the Designee will issue a written report containing a complete description of his activities and findings related to the development of Environmentally Superior Technologies and will issue a Technology Determination for each category of farms for which such determination is then possible. For purposes of this Agreement, the categories may be determined based on farm size, geographic location, the geographic concentration of the hog population, the type of farm, and any other factors the Designee deems appropriate. The Designee may issue additional reports and Technology Determinations as appropriate.

6. The parties understand and agree that the development and implementation of Environmentally Superior Technologies within the time frames contemplated by this Agreement will require that the Designee expand, intensify, and accelerate activities related to the identification, development, selection, installation, operation, and evaluation of alternatives to the existing anaerobic swine waste lagoon and sprayfield system on farms selected for testing of potential Environmentally Superior Technologies. The Companies hereby commit \$15 million to ensure that the Designee has the financial resources needed to meet this objective, with payments to be made as follows:
 - a. From time to time, the Designee will generate invoices or other forms of communication reflecting the need for payment, and

receive invoices from others, for all costs and expenses incurred by him or at his direction reasonably related to the activities described in paragraph 6 above, including the expenses of convening peer review panels and premiums for liability insurance, workers compensation or other insurance coverage reasonably required for the performance of the responsibilities set out in this Agreement.

- b. A representative of the Attorney General's Office, designated by the Attorney General, will promptly review all invoices received from the Designee, and will approve, and forward to Smithfield for payment all invoices for costs and expenses reasonably related to the activities described in paragraph 6 above.
- c. Smithfield agrees to pay all invoices approved for payment by the Attorney General within 30 days of receipt. The total of such payments will not exceed \$15 million without the agreement of the parties.

C. IMPLEMENTATION OF ENVIRONMENTALLY SUPERIOR TECHNOLOGIES

- 1. Within 18 months of the effective date of this Agreement, the Companies will prioritize their Company-owned Farms for conversion to Environmentally Superior Technologies based on appropriate environmental, engineering and operational factors, and submit their priority lists to the Attorney General for review and approval. The Attorney General will approve or disapprove the priority lists within 60 days of submittal. In the event that the Attorney General fails to either

approve or disapprove a list within 60 days of the submittal, the list will be deemed to be approved. Such review and approval will be done in consultation with DENR and any groups or individuals the Attorney General deems appropriate. If the Attorney General disapproves a priority list, he will state the reasons for his disapproval and describe his proposed revisions. Within 30 days after receiving notice of disapproval from the Attorney General, the Companies will make the proposed revisions to the priority list or notify the Attorney General that they disagree with the disapproval and invoke the dispute resolution provision of Section IV.B. of this Agreement.

2. In consideration of the Attorney General's Commitments herein, the Companies agree to convert all Company-owned Farms, in the farm category or categories specified in the Technology Determination, to the Environmentally Superior Technology or Technologies identified in the Technology Determination as soon as possible, but in any event within three years of receiving written notice of a Technology Determination and in accordance with the approved lists of priorities established pursuant to paragraph 1 above.
3. The Companies acknowledge the importance of independent Contract Farms to the success of the Companies' vertical integration operations and they reaffirm their intention to continue their relationship with those farms under contract with the Subsidiaries. To that end, the Companies will provide the financial and technical assistance to their Contract Farmers necessary to facilitate the conversion to Environmentally Superior Technologies within the time frames described in this Agreement.

4. Implementation will include the installation and operation of monitoring equipment and procedures needed to ensure compliance with applicable environmental standards, in accordance with the applicable permit conditions.

D. ENVIRONMENTAL ENHANCEMENT

The Companies agree to pay each year for 25 years an amount equal to one dollar for each hog in which the Companies (including, for such purpose, any successor-in-interest of any of the Companies, by merger, sale of stock or assets or otherwise) have had any financial interest in North Carolina during the previous year, provided, however, that such amount shall not exceed \$2 million in any year. For purposes of this paragraph, the Companies have a financial interest in any hog that, inter alia, they (or their nonparty subsidiaries or affiliates) raise, produce, contract for, own or slaughter. The first payment will be made within 30 days of the effective date of this Agreement, with subsequent payments to be made each year thereafter on or before the anniversary date of this Agreement. The funds will be paid to such organizations or trusts as the Attorney General will designate. The funds will be used to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate. Portions of the funds, not to exceed a total of \$2 million dollars, may also be designated as grants to the State to defray the costs incurred by the State as a result of this Agreement, including permitting and compliance assurance, in the discretion of the Attorney General. In making the determinations set out in this paragraph, the Attorney General will consult with the Companies, DENR, and any other groups or individuals he deems appropriate and may appoint any

advisory committees he deems appropriate.

E. COMPLIANCE ASSURANCE

The Companies acknowledge that the Attorney General, in consultation with DENR, will undertake a comprehensive review of the operation of the swine industry in North Carolina to ensure that the Companies and other integrators and operators of swine facilities are taking all appropriate steps, and have adopted compliance assurance systems, to ensure that they remain at all times in compliance with the law. The Companies agree to make available all documents which the Attorney General may request and to make available at the request of the Attorney General any employees of the Companies to be interviewed, in the course of this review. In the event the Companies seek to assert a claim of confidentiality pursuant to Chapter 132 of the North Carolina General Statutes as to any document requested by the Attorney General, they will so designate or indicate on the document at the time it is submitted. If the Attorney General receives a public records request for any document designated as confidential, the Attorney General will notify the Company that submitted the document of the request. It will be the responsibility of the Companies to present any arguments to the party seeking the disclosure or the Superior Court as to why disclosure should not be allowed. Nothing in this paragraph will be deemed a waiver of the attorney-client privilege or attorney work product doctrine.

F. ENHANCEMENT OF THE ALBEMARLE-PAMLICO NATIONAL ESTUARY PROGRAM

The Companies will assume a leadership role and involve all interested parties for the purpose of identifying and implementing those measures needed to strengthen

the Albemarle-Pamlico National Estuary Program. The Companies agree to work with the Attorney General and other appropriate federal, state, local authorities, environmental interests, and private sector representatives to develop enhancements to the Albemarle-Pamlico National Estuary Program to make it more effective. One of the principal goals of this initiative will be to seek the establishment of a regional National Estuary Program Office in eastern North Carolina to serve as a permanent resource to improve water quality. The Companies also commit to actively support and lobby for any federal and state legislation needed to implement the recommended enhancements.

IV. GENERAL PROVISIONS

A. *FORCE MAJEURE*

Force Majeure means any event arising from causes beyond the control and despite the best efforts of the Companies that delays or prevents the performance of any obligation under this Agreement. *Force Majeure* will include, without limitation:

1. Compliance with obligations required by this Agreement has been prohibited by any legislative, regulatory, federal, or other governmental action requiring the installation of a technology other than an Environmentally Superior Technology.
2. A Technology Determination which finds that the technology cannot be fully implemented within three years by the affected category or categories of farms, in which case the time for performance will be that set forth in the Technology Determination.

3. Failure to receive a permit for the installation and operation of an Environmentally Superior Technology within 3 months after DENR or the appropriate regulatory authority receives a complete and thorough permit application, in which case the time for performance will be extended for a period to compensate for the delay in permit issuance.
4. The unavailability of labor, or delays in the delivery of plans, materials, parts or equipment from third parties.
5. Issuance of a permit by DENR with conditions or requirements which the Designee determines would have materially affected the finding of economic feasibility in the Technology Determination.

B. DISPUTE RESOLUTION

1. If a dispute arises under this Agreement, the following dispute resolution procedures will apply.
 - a. The Companies will notify the Attorney General in writing as soon as they believe a *Force Majeure* event or dispute regarding the provisions of this Agreement has occurred. For *Force Majeure* events, the notice will include a description of the efforts undertaken to overcome the *Force Majeure* event and an estimate of the additional time required for that purpose. The Attorney General will notify the Companies whether he agrees that a *Force Majeure* event has occurred and whether he agrees to the additional time requested by the Companies. If the parties cannot resolve the

dispute or agree on the occurrence of a *Force Majeure* event or the additional time necessary, the parties agree to engage in mediation for a period not to exceed thirty (30) days in an effort to resolve the dispute.

- b. If the parties are unable to resolve the dispute, they will jointly submit the matter to the Superior Court of Wake County within five (5) days of the end of the mediation, and jointly request an expeditious resolution. It is understood that, in this proceeding before the Superior Court, either party may petition the Court for specific performance of this Agreement. The parties acknowledge that the Court has jurisdiction to interpret this Agreement and to order compliance with the terms of the Agreement, and that specific performance is the appropriate remedy for failure to so comply. Should the matter ultimately involve a petition to stay to the appellate division, no bond will be requested or required.

C. TERMINATION

The Agreement will terminate upon completion of all commitments and obligations provided for herein.

D. GOVERNING LAW

The provisions of this Agreement and all duties, obligations, and rights arising from it are governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction)

that would cause the application of this agreement of the laws of any jurisdiction other than the State of North Carolina.

E. SEVERABILITY

Should any portion of this Agreement fail, the remainder of this Agreement will not be affected, impaired or invalidated so long as the Attorney General fulfills his commitments under this Agreement.

F. ENFORCEABILITY

This Agreement is enforceable only by the parties hereto.

G. NOTICES

When written notification or communication is required by the terms of this Agreement, such notification or communication will be addressed to the following individuals at the addresses specified below (or to such other individuals and addresses as may be designated by written notice to the parties).

As to the Attorney General:

Daniel C. Oakley
Senior Deputy Attorney General
Post Office Box 629
Raleigh, NC 27602-0629.

As to the Companies:

Michael H. Cole
Associate General Counsel and Secretary
Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430

H. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties with respect to the transactions contemplated in this Agreement and supersedes all prior discussions, understandings, agreements and negotiations among the parties to this Agreement.

V. ATTORNEY GENERAL COMMITMENTS

Subject to the terms of this Agreement and in consideration of the commitments by the Companies herein, the Attorney General agrees:

- A. To use the full power and authority of his office to diligently pursue expeditious implementation of Environmentally Superior Technologies on farms in a category or categories identified in a Technology Determination and that are required to have individual or general permits under North Carolina law, regardless of ownership or operational control of the farms.
- B. To use his influence to expedite the permitting process; and
- C. Not to undertake any actions in conflict with this Agreement.

VI. RESERVATION OF RIGHTS

- A. Nothing in this Agreement shall be construed as an admission of liability on the part of the

Companies with respect to the operation of the present waste management systems on the Company-owned Farms or Contract Farms.

- B. Nothing in this Agreement shall be construed as an admission that the Companies are engaging or have engaged in activities which harm or have harmed public health or the environment.
- C. Nothing in this Agreement shall be construed to in any way limit State or private enforcement against the Companies for past, present, or future violations of law, including, but not limited to, State or Federal statutes, regulations, or rules, nor to create new private enforcement rights. This Agreement shall not be construed as a settlement of any liability of the Companies for penalties, fines, damages or other liability.
- D. Nothing in this Agreement shall relieve the Companies of their responsibility to comply with applicable law, including, but not limited to, State and Federal environmental laws, rules, and regulations.
- E. Nothing in this Agreement shall limit the ability of DENR or any other governmental agency from adopting rules or policies pursuant to their statutory authority.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

MICHAEL F. EASLEY

Attorney General of North Carolina

SMITHFIELD FOODS, INC.

By: _____ (SEAL)

Title: _____

BROWN'S OF CAROLINA, INC.

By: _____ (SEAL)

Title: _____

CARROLL'S FOODS, INC.

By: _____ (SEAL)

Title: _____

MURPHY FARMS, INC.

By: _____ (SEAL)

Title: _____

CARROLL'S FOODS OF VIRGINIA, INC.

By: _____(SEAL)

Title: _____

QUARTER M FARMS, INC.

By: _____(SEAL)

Title: _____