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## Neuse River Found., Inc. v. Smithfield Foods, Inc., 574 S.E.2d 48

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**NORTH CAROLINA**

**Neuse River Found., Inc. v. Smithfield Foods, Inc., 574 S.E.2d 48 (N.C. Ct. App. 2002)** (holding river association's suit against hog farming companies for improperly handling waste, resulting in pollution and contamination of certain rivers, failed for lack standing).

The Neuse River Foundation, Inc., riverkeepers and several noncommercial users joined with riparian landowners and other commercial users ("River Associations") to file suit in Wake County Superior Court against three hog farming companies ("Smithfield"). The River Associations alleged that these companies improperly handled hog waste, which resulted in massive pollution and contamination of the Neuse, New, and Cape Fear Rivers, and those river's tributaries and estuaries. The court dismissed the claims pursuant to rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. The River Associations appealed and the North Carolina Court of Appeals affirmed.

The River Associations based their claims on theories of negligence, trespass, strict liability, public nuisance, unfair and deceptive trade practices, private nuisance and the public trust doctrine. The River Associations alleged that North Carolina's coastal plain experienced an explosion in its hog population as traditional North Carolina style family hog farming gave way to mass production pork factories first conceived and devised by Smithfield. The traditional family farmer only maintained a relatively small herd of hogs in an area sufficient to accommodate the hog waste without significant contamination.

The River Associations' complaint detailed the harmful effects of Smithfield's contamination. Instead of being purified through sewage treatment, hog feces and urine in the mass production pork factories fell through a slatted floor to a cellar below the warehouses, which were periodically flushed, into open-air earthen pits known as swine "lagoons." The River Associations requested the establishment of a "Court Approved Trust" to pay for the complete remediation of several of North Carolina's waterways, as well as a prohibition of Smithfield's use of swine lagoons and sprayfields.

To have standing, an environmental plaintiff must allege injury to a protected interest that cannot be considered merged in the general public right; causation; and proper, or individualized, forms of relief. The court stated that North Carolina had no authority supporting the contention that injury to aesthetic or recreational interest alone, regardless of degree, confers standing on an environmental plaintiff. The court, therefore, concluded that the River Associations did not have standing to maintain an action against Smithfield under the alleged circumstances.

Because Smithfield's lagoon waste management systems existed pursuant to express legislative authority, the court would not enjoin as a nuisance an action authorized by valid legislative authority. The North Carolina General Assembly established a permitting program for animal waste management systems to help protect water quality and promote innovative systems and practices which attempted to minimize the regulatory burden.

The landowners did claim injury to their riparian property or businesses. However, none of the landowners sought individual compensation for the invasion of a more personal right not "merged in the general public right." The landowners sought only a judgment prohibiting use of sprayfields and cesspools and monetary damages for the restoration and remediation of the rivers.

Because landowners did not contend that the General Assembly exceeded its authority in violation of the state's constitution, the court declined to prohibit an activity the legislature legally allowed.

*Regan Rozier*

**N.C. Home Builders Ass'n v. Env'tl. Mgmt. Comm'n, 573 S.E.2d 732 (N.C. Ct. App. 2002)** (holding North Carolina Environmental Management Commission had statutory authority to adopt certain rules regarding wetlands regulations and complied with the local Administrative Procedure Act in adopting those rules).

A builders association, as well as other parties, filed a petition for a declaratory ruling with the North Carolina Environmental Management Commission ("EMC") asserting that EMC did not have statutory authority to adopt specific wetlands rules and did not comply with the North Carolina Administrative Procedure Act ("APA"). The EMC originally denied this petition, but subsequently issued a declaratory ruling that it did possess statutory authority to adopt the wetlands rules, and that it adopted the rules in compliance with the requirements of the APA. The builders association brought this petition for judicial review before the Wake County Superior Court. The court affirmed EMC's prior declaratory ruling and dismissed the petition for review. The builders association then filed a notice of appeal to the North Carolina Court of Appeals. In their appeal, it asserted two claims of error. They contended the lower court made erroneous interpretations of law in determining that the EMC complied with requirements of the APA in adopting the wetland rules; and that the EMC had statutory authority to enact these rules.

On March 14, 1996, the EMC adopted certain wetlands rules. The rules classified and designated uses of state wetlands and set forth procedures for the EMC to review water quality certifications issued pursuant to Section 404 of the Clean Water Act. The adopted regulations differed, in part, from the proposed regulations as