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Decades of legal battles over pollution by industrial hog farms haven't changed much for eastern NC residents burdened by environmental racism

Courts agree that the people who live near the industrial hog farms in Bladen, Duplin and Sampson counties continue to suffer environmental harms, but state and local laws make it increasingly difficult to get justice.

by **Melba Newsome**

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Screenshot from the Bladen County Tax Assessor website shows two parcels of land: One 261 acre parcel was purchased by Kinlaw Farms LLC in 1998, the other 34 acre plot (outlined in blue) was purchased by Billy Kinlaw in 1994.

By Melba Newsome

In the mid-1990s, Billy Kinlaw purchased land in a remote, mostly Black section of White Oak, a rural community of just 350 people in Bladen County.

Kinlaw, who was white, never intended to live there. The property was strictly a business investment for his contract hog growing operation for Murphy-Brown, the Smithfield Foods subsidiary.

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Before long, Kinlaw Farms had more than 14,000 hogs in a dozen swine houses surrounded by three waste lagoons on [nearly 300 acres](#).

The surrounding families, most of whom had lived there for generations, had to [endure everything that comes with an industrial hog operation](#) of that size: the flies, buzzards and endless sounds of pigs squealing. In addition to the animals came the noise and disruption from the parade of heavy trucks rambling down unpaved roads; minute particles of feces that marred their homes, cars, mailboxes and laundry from hog waste flushed into open lagoons and sprayed onto feed crops as fertilizer.

And, the stench. Oh, God, the stench!

Enough is enough

After 20 years, Joyce Louretha Richardson McKiver had had enough. In 2014, the then 80-year-old became the lead plaintiff in [Joyce McKiver v. Murphy-Brown, LLC](#), one of 26 federal nuisance lawsuits brought against the company by more than 500 plaintiffs, the majority of them Black. Juries in five trials in 2018 and 2019 awarded 36 plaintiffs a total of almost \$550 million, a number that was quickly whittled down to about \$98 million because of a state law that caps punitive damages.

But on Jan. 31, 2020, Virginia defense attorney Stuart Raphael arrived at the Italianate Lewis F. Powell Jr. Courthouse in Richmond to ask the 4th Circuit Court of Appeals for a do-over. Raphael argued that even the \$3.25 million awarded to the plaintiffs in the McKiver case was excessive because, as he put it, “Murphy-Brown’s conduct had not been willful and wanton.”



During the questioning, Reagan-appointed Harvie Wilkinson III gave a hint of the ruling that would come nine months later. He suggested that plaintiffs were being made to suffer under conditions that also impacted their health because they lacked political influence and didn’t live in what he called “McMansions.”

In November 2020, the three-judge panel rejected Smithfield’s call for a retrial and most of its arguments. Writing for the majority, U.S. Circuit Judge Stephanie Thacker [said](#) the company had persisted in its chosen farming practices despite its knowledge of the harms to its neighbors, “exhibiting wanton or willful disregard of the neighbors’ rights to enjoyment of their property.”

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The lower court verdict would stand.

We were not prepared

North Carolina became an innovator in industrialized pork production and the fastest growing swine-producing state in the country when Smithfield moved into Bladen County in 1992. Legislators and investors were not dissuaded by environmentalists who warned that building a receptacle for huge piles of hog waste filled with hazardous



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contaminants in a floodplain probably wasn't the best idea.

When Hurricane Floyd brought life-threatening and catastrophic flooding ashore in September 1999, floodwaters breached the lagoons and transformed coastal rural communities like the McKivers' into seas of dead hogs, chickens, turkeys and their toxic waste.

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Two years earlier, the industry's explosive growth had prompted the state to place a moratorium on expansion — sort of. It prevented companies from building new lagoons but didn't force them to relocate from the floodplains or to remediate old ones.

Promises made; promises broken

After Floyd, then-Gov. Jim Hunt said the hog lagoons had to be gone in a decade. The following year, Smithfield Foods signed an [agreement](#) with the state promising to avoid this kind of environmental calamity in the future by developing “environmentally superior” waste technologies.



Sludge waste from the sprayfield operation can be seen oversaturating the land, pooling and possibly leading to runoff into nearby waterways, Photo credit: Cape Fear Riverwatch.

Yet, more than 20 years later, the lagoons are still there. What happened during Floyd happened again in 2016 during Hurricane Matthew and in 2018 during Florence, albeit on a smaller scale.

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That's because the 2000 agreement to eliminate the lagoons contained a loophole so big Smithfield has been driving 18-wheel hog haulers through it ever since, said co-director of the Environmental Law and Policy Clinic at Duke University School of Law, Ryke Longest.

“Smithfield got off the hook because they were able to point to this clause in the contract that said they have to fix the problems in a way that was economically feasible,” said Longest. “They said they can't put on new pollution controls because their prices are still the same and that's not economically feasible for them.”

Longest compares the outdated years-old process Smithfield continues to use to fitting a car with a tailpipe when a catalytic converter is readily available.

“The systems that they're using were designed in some cases 30 or 40 years ago,” said

Longest. “They are allowed to continue to operate under a grandfathering provision under some assumptions that have never really been tested that these things would not leak or cause significant groundwater or other pollution concerns.

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“The scientific evidence is that they do leak. The amount of waste getting off the farm and into the groundwater looks to be very significant.”



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From 2,000 feet up, it's clear that the fields surrounding the farms are saturated with sludge pumped from the lagoons which greatly exceeds what's needed to fertilize the crops. Instead of being absorbed, it pools. Some amount of it eventually runs off into nearby creeks, streams and watersheds.

“We’ve been sampling streams that run off the spray field of those facilities,” said Kemp Burdette, the Cape Fear Riverkeeper. “One has had levels of bacteria and nutrients so high that it’s been placed on [an] EPA list of water bodies that are so polluted that they’re not able to meet their designated uses.”

Decades of administrative and court battles

It's hard to keep track of the number of lawsuits, complaints, EPA filings and administrative challenges that have taken place since industrial hog farming started to dominate the state's economy more than 30 years ago. Allegations of racism and environmental injustices have been at the heart of many of those battles.

Several studies have shown that Black, Latino and Indigenous populations where the hog farms are located have been disproportionately impacted by these practices.

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Steve Wing, an epidemiologist and associate professor at UNC, [spent two decades](#)

[documenting the effects](#) of living or even going to school near an industrial hog farm. Wing [died](#) before the trials began but his research describing the headaches, coughing and nausea he found in higher numbers among hog farm neighbors loomed large. After five jury losses and the 4th Circuit defeat, Smithfield saw the writing on the wall and quickly settled with plaintiffs.

In the aggregate, the company has paid out about \$15 million to plaintiffs but these nuisance lawsuits appear to have done little to curb the behavior that spawned them in the first place. For mega companies like Smithfield, a wholly owned subsidiary of the Chinese [WH Group](#) — the world's largest pork company — it is the cost of doing business. Nonetheless, the pork industry has plenty of friends in state and local government to protect their interests.

Protecting the industry first and foremost

State Sen. Brent Jackson, (R-Autryville) was a lead sponsor of [Senate Bill 711](#), the 2018 Farm Act, which limited when and how hog-farm neighbors can file such suits and restricted punitive damages.

“If we don’t do something to let [Smithfield] know they are welcome here, they’ll be leaving this state,” the News & Observer reported Jackson as [saying during the argument for the bill’s passage](#). “Because I do know there’s other states courting them to leave. And if they leave this state, these rural and small towns we have in eastern North Carolina will dry slam-up. They’re having a hard enough time as it is today to survive.”

Now, a nuisance lawsuit must be filed within a year of when the farm is established or any “fundamental change,” which does not include changes in ownership, technology, product or size. Punitive damages are only allowed if the farm operator has a criminal conviction or has received a regulatory notice of a violation.

“The conditions that these operations create make living by these hog operations unbearable,” said SELC attorney Blakely Hildebrand. “These nuisance claims are one of the only legal tools that people can use to protect their property rights. So when the legislature rolls them back, they are effectively taking away the last legal tool that these communities have to protect themselves, their families and their property.”

A new front in the hog wars

While Smithfield continues to argue it cannot afford to invest in a better hog waste management system, the company is making significant investments in what it calls green energy. In 2018, the company entered a [joint venture with Dominion Energy](#) to convert waste from 19 of its Duplin and Sampson county farms into biogas.

Methane captured from the waste pits will be transported [through a 30-mile pipeline](#) and processed in a new anaerobic digester system on the border of the two counties before being injected into an existing natural gas pipeline.

Earlier this year, DEQ issued permits allowing Murphy-Brown to install anaerobic digesters at four swine feeding operations. The SELC filed an [EPA complaint](#) on behalf of the Duplin County NAACP and the North Carolina Poor People’s Campaign alleging that issuing the permits violated Title VI of the Civil Rights Act of 1964.

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Title VI prohibits agencies that receive federal funds from discriminating on the basis of race. “For decades, the swine industry has avoided properly managing animal waste to prevent pollution, and instead displaced harm onto communities of color,” the complaint states.

In addition to ignoring long-standing environmental justice and pollution concerns, granting the permits also entrenched an outdated management system with documented harms. The SELC says DEQ also failed to identify and require cleaner technology to manage hog waste or to evaluate and address the effect of its permitting decisions on water quality, both of which are mandated by state law.

“Smithfield is using cleaner treatment systems in other states to deal with its hog waste

pollution, and North Carolina communities deserve better,” Hildebrand said.

Longest believes Smithfield’s new biogas operation gives the residents a new avenue to challenge the company’s claim that it lacks the financial resources to implement a better waste management system.

“Given this new revenue stream, how on earth can you say that it’s not economically feasible?” he asked. “After these new revenues come online, shouldn’t they now be made to live up to their promises?”

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Melba Newsome is an award-winning freelance writer with more than 20 years' experience reporting on news and features. Her feature credits in many prominent publications including the New York Times, Bloomberg Businessweek, Oprah, Playboy, Reader's Digest, Time, Good Housekeeping and Wired. Melba also is a frequent contributor to such online sites as NBCNews and Healthline.

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