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Memorandum of Agreement
Between
United States Environmental Protection Agency
And
Perdue Farms Incorporated

Perdue Clean Waters Environmental Initiative

Preamble

WHEREAS, The Chesapeake Bay is North America's largest and most biologically diverse estuary, home to more than 3,600 species of plants, fish and animals. Its waters have historically provided unique economic and recreational opportunities for the residents of the Mid-Atlantic area served by EPA Region 3 ("Region 3"), including Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia. These waters, however, are under stress and its economic and recreational uses are threatened by increasing sediment and nutrient loads and,

WHEREAS, Agriculture is a significant source of nutrients entering U.S. water, with animal manure and poultry litter contributing to the agricultural nutrient load. For example, on the Delmarva Peninsula, poultry growing operations are the largest animal feeding sector, with over 2,000 contract producers on the peninsula. Runoff from improperly managed poultry litter activities can adversely affect the water quality of the Bay and the Coastal Bays and,

WHEREAS, EPA Region 4 ("Region 4") serves the residents of eight southeastern states, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee, and six federally recognized Native American tribes. Areas in these states and tribes represent very diverse landscapes and resource treasures. The continued health and biodiversity of waters within these states and tribal areas depends on the maintenance of high-quality terrestrial and aquatic habitat,

WHEREAS, Region 4's largest production agriculture commodity is poultry. Region 4 accounts for 56 percent of U.S. broiler production which represents 4.9 billion birds per year and over $10 billion in annual sales. Poultry litter is a by-product of the broiler industry and is produced at a rate of 5 million tons/year in Region 4.

WHEREAS, Perdue Farms Incorporated ("Perdue") is one of several poultry integrators doing business within Region 3 and Region 4. Perdue has demonstrated consistent environmental leadership in its efforts to protect the Chesapeake Bay, Coastal Bays, and nation's rivers as demonstrated by its efforts to transfer litter off the Delmarva Peninsula through its litter pelletizing facility. Perdue has entered into Memoranda of Understanding with state agencies for the protection of the environment and to enhance compliance with federal, state, and local regulations and,

WHEREAS, Perdue intends to enhance its environmental leadership as well as its efforts to protect the nation's waters by offering education, training, and environmental assessments to independent contract chicken producers growing for Perdue ("Producers") and,

WHEREAS, In order to protect and to ensure the long-term viability of the poultry industry in the southeast and along the mid-Atlantic, including the Delmarva peninsula, Perdue feels it is in the best interest of the industry to work in partnership with EPA Region 3 and EPA Region 4 ("EPA") to develop an environmental leadership program and,

WHEREAS, On September 18, 2006, Perdue and Region 3 committed to work together to develop and implement a pilot program on the Delmarva Peninsula known as the Perdue–EPA Clean Bays Environmental Management Initiative that was designed to encourage producer compliance and reduce nutrient pollution into our waters and,

WHEREAS, After one year of implementation of the Perdue-EPA Clean Bays Environmental Management Initiative, Perdue and Region 3 have conducted an assessment of the program, and have concluded that the program has been beneficial to Producer compliance and the environment and should be expanded to all Producers and,

WHEREAS, Region 4 recognizes the benefits of the Perdue-EPA Clean Bays Environmental Management Initiative and,

WHEREAS, Perdue, Region 3, and Region 4 ("Parties") have identified other environmental opportunities in the areas of environmental management systems and sustainable agriculture that the Parties agree to include in the expanded program and,

WHEREAS, Section 102(2)(G) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(G) authorizes federal agencies to "make available … advice and information useful in restoring maintaining and enhancing the quality of the environment." Section 104(a) and (b) of the Clean Water, 33 U.S.C. 1254(a) and (b), authorize EPA to encourage, cooperate with and render technical services to individuals, including the general public, as well as public and private sector entities to promote the coordination and acceleration of demonstrations, studies and training relating to the causes, effects, prevention and elimination of water pollution.

THEREFORE, THE PARTIES RESOLVE to work together to develop and implement the *Perdue Clean Waters Environmental Initiative* ("Initiative"). The purpose of this Initiative is to continue to foster Perdue's environmental leadership in the poultry industry by providing training, assistance, and environmental assessments to the Producers to enhance their compliance with federal, state, and local environmental regulations and specific best management practices ("BMPs") and by the use of Environmental Management Systems ("EMSs") at Perdue processing facilities.

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The goal of this Initiative is to restore and protect our nation's waters. To accomplish this goal, the Initiative is designed to minimize environmental impacts to our nation's waters, to support continued corporate environmental excellence, to encourage sustainable agriculture, and to improve Producers' compliance with environmental requirements. The Parties have identified the following critical components of the Initiative and plan to work together to refine these:

Perdue Corporate Environmental Stewardship

1. **Sustainable Agriculture:** It is in the interest of Perdue and the Producers to employ agricultural practices to ensure environmental protection and a prosperous and sustainable agricultural industry. Toward that end, Perdue agrees to utilize feed management techniques to minimize phosphorous content of poultry litter and endeavor to minimize the use of substances that are determined jointly by the Parties to adversely affect surface and groundwater quality. Perdue currently utilizes phytase in its feed formulation and has adjusted the composition of its feed to minimize the phosphorous content of poultry manure. Perdue agrees to continue this practice and to continue to investigate and utilize other means to minimize the phosphorus levels of litter if found not to detrimentally affect bird health or growth. Perdue agrees to make every effort not to use arsenic compounds in its feed, but may use it where the health of the flock is a concern and other non-arsenic techniques fail to restore the flock to health in a timely manner. EPA and Perdue intend to engage in regular technical discussions on advances in feed management practices to identify and employ new advances in sustainable agriculture.

2. **Environmental Management Systems:** To enhance Perdue's environmental excellence, Perdue plans to implement an Environmental Management System at all of its processing plants using as a model the ISO 14001 based program that has been developed for Perdue's Salisbury processing plant.

Producer Program

1. **Training and Assistance:** Proper training and assistance are critical to ensure that both Perdue associates and the Producers have sufficient tools and knowledge to comply with environmental regulations and to take the necessary actions to minimize nutrient loads to our nation's waters. Under the September 2006 Perdue-EPA Clean Bays Environmental Management Initiative, Perdue and Region 3 have developed a training program in consultation with other federal and state agricultural agencies. Under this Initiative, the Parties plan to modify the training program to incorporate lessons learned from the Perdue-EPA Clean Bays Environmental Management

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Initiative. The Parties will also review modifications proposed by Region 4 and agricultural agencies and environmental departments in Region 4 states that were not part of the September 2006 Perdue-EPA Clean Bays Environmental Management Initiative's pilot program.

Once updated, the training program, to be jointly presented by Perdue and EPA, will:

a. provide Perdue flock supervisors training necessary to perform thorough environmental and compliance assessments;
b. provide Producers information on Best Management Practices and how they are to comply with federal, state and local environmental requirements governing poultry operations; and
c. provide Producers with technical guidance and information about publicly available financial assistance to support implementation of nutrient management plans.

2. Producer Environmental Assessments: Regular and thorough Producer Environmental Assessments ("Assessments") are critical if the goals of this Initiative are to be achieved. Perdue, in previous consultation with EPA, developed an Assessment program that Perdue implemented as a part of the Perdue-EPA Clean Bays Environmental Management Initiative's pilot program. With this Initiative, the previous pilot program is being expanded to include the Assessment of all dry litter chicken facilities owned or operated by the Producers located in Region 3 and 4 states only. In addition, an updated assessment checklist has been developed by Perdue. This expanded Assessment program is to be implemented in phases according to the following schedule:

April 2009	October 2009	April 2010	October 2010	April 2011	October 2011	April 2012
Retrain Region 3 Flock Supervisors, Producers with >100,000 capacity	**Region 3 assessments on farms with >100,000 capacity**	**Train Region 3 Producers with 60,000-100,000 capacity**	**Region 3 assessments on farms with 60,000-100,000 capacity**	**Train remaining Region 3 Producers**	**Region 3 assessments on remaining farms**	
	Train Region 4 Flock Supervisors, Producers with >125,000 capacity	**Region 4 assessments on farms with >125,000 capacity**	**Train Region 4 Producers with 80,000-125,000 capacity**	**Region 4 assessments on farms 80,000-125,000 capacity**	**Train remaining Region 4 Producers**	**Region 4 assessments on remaining farms**

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In order to maintain a more comprehensive Assessment checklist, EPA, in consultation with participating Region 3 and 4 states agrees to provide available guidance that reflects state and federal environmental requirements. These criteria will be incorporated by Perdue into the Assessment checklist.

The Assessment checklist is intended to promote compliance by the Producers with applicable state and federal environmental requirements, and evaluate:

- whether Producers have obtained a Nutrient Management Plan,
- whether critical elements of the Nutrient Management Plan, as it relates to chicken operations within the production area, are being followed, and
- whether required Best Management Practices are fully implemented within the production area.

The Assessment should also record that the Producer has a means of disposing of and handling litter that is consistent with good environmental practices and all applicable federal and state regulations. Perdue is not expected to verify the accuracy of the Producer's plan and does not intend to perform assessments of operations outside the production area.

The Assessments are to occur at a frequency of two (2) times per year at each Producer's facility. One assessment should be conducted within a reasonable time after birds have been removed from the farm but prior to the next placement of birds and another assessment should be conducted during the Producer's grow-out cycle. Perdue agrees to make the Assessments available to EPA in redacted form upon request.

3. **Deviation Notification Process:** During Perdue's Assessments, it is possible that deviations may be identified regarding some Producers' operations. It is important from an environmental compliance standpoint that these deviations be corrected in a timely and appropriate manner. During the Perdue-EPA Clean Bays Environmental Management Initiative, Perdue developed and implemented a program to enable the Producers to address deviations identified during the Assessments. The same response to deviations will operate under this Initiative. Specifically, in the event that Perdue's Assessment identifies a deviation, Perdue should implement the Deviation Notification Process, which alerts the Producer to correct the deficiency by a certain date. If a deviation is not addressed by a Producer in the time specified in the Assessment and the issue is elevated to Perdue's Environmental Services group, it will be logged and tracked to closure. Perdue agrees to make the deviation log available to EPA for review upon request with Producer names redacted and agrees to notify EPA annually of Producers that are no longer in the program.

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4. **Environmental Results:** Our shared goal in the development and implementation of this Program is the restoration and protection of our nation's waters. Toward that end, it is central that the program be designed and implemented to achieve environmental results. Perdue, in consultation with EPA, intends to develop and implement an information system and set of program measures designed to track progress in achieving environmental improvement and compliance. Perdue agrees to make available information regarding Assessments and deviations available for EPA review except that the database will not contain Producer names and locations but will substitute a confidential identification number specific to an individual farm.

5. **Program Evaluation:** In order to ensure that the program is accomplishing the intended results, Perdue and EPA plan to conduct an annual evaluation, involving joint site visits, joint record reviews, including reviews of Assessments and Deviation Response Plans, and environmental results analysis. Perdue and EPA intend to use the information obtained from these evaluations to assess the effectiveness of program implementation and make any necessary program modifications.

6. **Recognition:** EPA appreciates the efforts of its partners to improve water quality and compliance. Perdue, in consultation with EPA, intends to work with other agencies and organizations to develop a program designed to recognize those program participants who demonstrate environmental and compliance excellence, particularly those that are judged to be outstanding in their efforts to minimize nutrient loads to our waters.

7. **Outreach:** In order to further our shared goals of environmental protection and compliance, materials and tools developed under this program with EPA assistance may be shared with the public and other members of the poultry industry.

8. **EPA Compliance Assurance Activities:** While nothing in this agreement waives or limits the authority of EPA to conduct compliance monitoring (including inspections or other information gathering activities) or to take enforcement action pursuant to federal law, the Agency intends to consider the good faith and full participation by Perdue and the participating Producers in this MOA as a factor in determining whether and how such activities will be undertaken.

9. **Record Retention:** Perdue agrees to maintain copies of all Assessments and Deviation Response Plans for a period of 4 years (1 year after full implementation) of the Producer Program.

10. **Record Review:** Perdue agrees to provide EPA with copies of any documents generated by Perdue as part of this initiative upon request by EPA. These documents may be redacted to shield the identity of the Producers. However, if EPA needs to review documents in their entirety for program evaluation purposes, EPA can have access to these documents on-site at Perdue's regional complexes located in Salisbury,

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Maryland and Perry, Georgia. This MOA in no way limits EPA's legal authority to obtain documents from Perdue or any of the Producers.

Limitations

This Initiative only applies to Producers' dry litter chicken operations in Region 3 and 4 states.

Nothing in this Agreement shall limit the authority of EPA to conduct any inspections, information gathering, or enforcement applicable under federal law.

Perdue's participation in this Initiative is not an admission that it is an "owner or operator" under the Clean Water Act of the Producers' operations and/or facilities.

All commitments made by EPA in this MOA are subject to the availability of appropriated funds and Agency budget priorities. All commitments made by Perdue in this MOA are subject to the availability of funds and budget priorities. Nothing in this MOA, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Perdue agrees not to submit a claim for compensation for services rendered to EPA in connection with any activities it carries out in furtherance of this MOA. This MOA does not exempt Perdue from EPA policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations and procedures under separate written agreements.

Under federal ethics rules, EPA may not endorse the products or services provided by private entities. Nothing in the MOA constitutes an endorsement by either party of the products, services, and/or fundraising activities of the other. Perdue agrees not to make statements to the public at workshops and meetings, promotional literature, on its web site or through any other media that imply that EPA endorses Perdue or any service or product offered by Perdue. Perdue may provide the public with information regarding the terms of this MOA and advise the public that Perdue and EPA are cooperating in efforts to protect human health and the environment. Any written promotional materials prepared by Perdue that describes this MOA must be approved by EPA.

The EPA Official Seal and Identifier ("EPA logo") may only be used for official EPA purposes and cannot be used to promote commercial products or services. Perdue may display the EPA logo on brochures and written materials relating to joint activities of EPA and Perdue conducted under this MOA only if the use of the EPA logo on such materials is approved in writing by EPA.

This MOA is a voluntary agreement and does not create any right or benefit, claim or defense, substantive or procedural, enforceable in law or equity. Nor does it create any legally binding obligation on either Perdue or EPA or any of their officers or employees or any other person. This MOA does not apply to any person outside Perdue or EPA.

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Effective Term

This MOA is to take effect upon the signature of the Parties and shall remain in effect for a period of four years (1 year after full implementation). This MOA may be modified or extended at any time per the mutual written consent of the Parties. Additionally, this MOA may be terminated at any time by either party providing advance notice to the other party at least 90-day prior to the desired termination date.

SIGNED this 21st day of November, 2008.

James A. Perdue, Chairman
Perdue Farms Incorporated

Donald S. Welsh, Regional Administrator
United States Environmental Protection Agency
Region 3

J. I. Palmer, Jr., Regional Administrator
United States Environmental Protection Agency
Region 4

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