

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:08-CV-48-BO

UNITED STATES OF AMERICA, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 )  
 NORTH CAROLINA DEPARTMENT )  
 OF TRANSPORTATION, )  
 )  
 JERRY GASKILL, and )  
 )  
 BILLY R. MOORE, )  
 )  
 )  
 Defendants. )

**SETTLEMENT AGREEMENT BETWEEN UNITED STATES  
AND DEFENDANTS NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
JERRY GASKILL and BILLY R. MOORE,**

WHEREAS, the United States of America contends that the North Carolina Department of Transportation ("NCDOT"), through its employees (Jerry Gaskill and Billy R. Moore, amongst others), committed violations of the Clean Water Act and the Rivers and Harbors Act by the unauthorized dredging of a channel and the unauthorized discharge of pollutants into the waters of the United States in the Currituck Sound in Currituck County, North Carolina, as set out in the Complaint. The United States contends that NCDOT is liable through the actions of its Ferry Division Employees and does not contend that former NCDOT Secretary Lyndo Tippett or former Deputy Secretary David King had

knowledge of the Clean Water Act and other violations at issue in this case.

WHEREAS, NCDOT has restored the damaged area of the Currituck Sound and has taken steps to prevent any further unauthorized dredging in the waters of the United States, as well as providing additional offsite mitigation at great expense to NCDOT.

WHEREAS, NCDOT denies liability for the alleged wrongdoing that occurred but all defendants desire to settle any civil liability in this matter by the payment of \$50,000 to the United States and by NCDOT providing agreed upon training regarding environmental requirements, and the United States desires to accept such sum and agreed training, in full satisfaction of its civil claims against the defendants; and it is hereby STIPULATED and AGREED as follows:

1. That defendant NCDOT agrees to pay a civil penalty in the amount of \$48,000 in full settlement of this matter, such payment to be made within 30 days of this agreement becoming final as set forth below. Defendants Jerry Gaskill and Billy R. Moore will pay the United States the sum of \$1,000 each upon the above terms.

2. That the payment shall be applied as directed by the United States, shall be made payable to the "United

States Department of Justice," and delivered to the United States Attorney's Office, Civil Division, 310 New Bern Avenue, Suite 800, Raleigh, N.C. 27601-1461. The payments by Jerry Gaskill and Billy R. Moore will be made by certified funds or money orders.

3. That as further consideration for this settlement of claims, NCDOT shall provide periodic training regarding the Clean Water Act and related environmental requirements (as agreed between the U.S. Army Corps of Engineers and NCDOT in the attached letter agreement dated February 24, 2009, incorporated herein).

4. In addition, the United States shall file a dismissal of all civil claims in this action and not pursue civil claims against defendants NCDOT, Jerry Gaskill and Billy Moore or other known or unknown present or former NCDOT employees based upon the conduct expressly alleged in this civil action.

5. That the Government shall accept this full payment and compliance with the above provisions, if made, in full satisfaction of all civil claims made, or which could have been made, against NCDOT, Jerry Gaskill and Billy R. Moore and shall not civilly prosecute the defendants for the alleged violations at issue.

6. That NCDOT will dismiss its counterclaims against the defendants, Jerry Gaskill and Billy R. Moore, filed in this case and will not seek to recover from said defendants any expenses for the training specified in this Agreement or the civil penalty in the amount of \$48,000 to be paid by NCDOT in this lawsuit. However, NCDOT reserves the right to file any other causes of action it may have against said defendants for other amounts paid to mitigate or remediate the incident underlying the current lawsuit. Said defendants, by execution of this consent order are not waiving any defenses they may have, should NCDOT elect to bring any action in the future against them. However, this settlement cannot be plead by defendants Jerry Gaskill and Billy R. Moore as a bar to other claims which may be brought by the North Carolina Department of Transportation arising from this same incident underlying the current lawsuit.

7. That each party to this agreement shall bear its own costs.

8. The parties acknowledge that after the execution of this Settlement Agreement but before it becomes final, final approval by the United States is subject to requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right

to withhold or withdraw from this Settlement Agreement if the comments received disclose facts which lead the United States to conclude that the proposed settlement agreement is inappropriate, improper, or inadequate. The defendants agree not to withdraw from, oppose, or challenge any provision of this settlement agreement unless the United States has notified the defendants in writing that it no longer supports entry of the Settlement Agreement.

9. That this written Settlement Agreement constitutes the full and complete agreement between the United States and defendants as to this civil matter, and there are no other terms and conditions of the agreement other than those stated herein.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

**GEORGE E. B. HOLDING**  
**United States Attorney**

BY: \_\_\_\_\_  
NEAL I. FOWLER  
Assistant United States  
Attorney  
Civil Division

(Signature Pages for

Settlement Agreement Between United States  
And Defendants North Carolina Department of Transportation,  
Jerry Gaskill and Billy R. Moore  
Continued)

**NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_  
JIM TROGDON, P.E.  
Chief Operating Officer

**ROY COOPER  
ATTORNEY GENERAL**

BY: \_\_\_\_\_  
Elizabeth N. Strickland  
Special Deputy Attorney General

BY: \_\_\_\_\_  
Jason T. Campbell  
Assistant Attorney General  
  
Attorneys for Defendant  
North Carolina Department of Transportation

(Signature Pages for  
Settlement Agreement Between United States  
And Defendants North Carolina Department of Transportation,  
Jerry Gaskill and Billy R. Moore  
Continued)

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JERRY GASKILL

WHEATLEY, WHEATLEY, WEEKS & LUPTON, P.A.

BY: \_\_\_\_\_  
Claud R. Wheatley, III  
Attorney for Defendant Jerry Gaskill

(Signature Pages for  
Settlement Agreement Between United States  
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Jerry Gaskill and Billy R. Moore  
Continued)

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BILLY R. MOORE

BOYCE & ISLEY, PLLC

BY: \_\_\_\_\_  
R. Daniel Boyce  
Attorney for Defendant Billy R. Moore