JOINT STATEMENT OF
TEXAS HOG HUNTERS ASSOCIATION (THHA)
AND
ENVIRONMENTAL DEFENSE FUND (EDF)

IN SUPPORT OF H.B. 3451 AND S.B. 1454
To The Texas Legislature:

Our two organizations—Texas Hog Hunters Association (THHA) and Environmental Defense Fund (EDF)—offer this joint statement in support of H.B. 3451 and S.B. 1454 and in opposition to the plan of Agriculture Chairman Sid Miller to spread rat poison (warfarin) across Texas for use on feral hogs. Although THHA and EDF have never before worked together on any issue, and probably will disagree on some other issues in the future—on these issues we strongly agree. We urge all members of the Legislature to support the proposed legislation, which will require appropriate and necessary studies before spreading rat poison across Texas lands.

At this writing, the legislation has 114 authors/coauthors in the House. Over 20,000 Texas hunters have signed a petition against the poison program. Many other organizations and individuals agree with our position, including:

- Texas Veterinary Medical Association (TVMA)¹
- Texas Wildlife Association (TWA)²
- Texas State Rifle Association (TSRA)³
- Wildlife Rescue & Rehabilitation (WRR)⁴
- Sierra Club⁵
- Wildlife Revealed
- TexPIRG⁶
- Various hunting and sporting-goods outlets⁷

Also enclosed are miscellaneous, representative letters from other individuals who support our position.⁸

We oppose the warfarin-poison program and support H.B. 3451 and S.B. 1454 for many reasons:

1. Using warfarin poison will damage feral-hog control in Texas and increase the number of feral hogs. The proposed warfarin-poison program will damage rather than help feral-hog control in Texas. Texas has proven, established, safe methods of feral-hog control: trapping and hunting. Both of those methods are becoming

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¹ See the TVMA statement, included at Tab 1.
² See the TWA statement, included at Tab 2.
³ See the TSRA statement, included at Tab 3.
⁴ See the WRR statement, included at Tab 4.
⁵ See the Sierra Club statement, included at Tab 5.
⁶ See the TexPIRG statement, included at Tab 6.
⁷ See, for example, the letter of David Gochman, owner and former President of Academy Sports & Outdoors, included at Tab 7.
⁸ See letters from John Pieratt; Jesse Griffiths; Will Herring, included at Tab 8.
more sophisticated and effective each year. THHA has asked Sid Miller to establish a statewide Rapid Response Network, to ensure that trappers or hunters can be on any property owner’s property within 24 hours. That’s feasible. For example, THHA is in the process of developing a smart-phone app to connect hunters, trappers, and landowners in a sophisticated but simple network, with ample support resources (including form contracts and low-cost insurance). Sophisticated, remotely activated, motion-sensitive traps also are available. Just within the last couple of years, drones equipped with thermal-imaging cameras have been developed that allow accurate surveys of hog concentrations, day or night. Unfortunately, Commissioner Miller has failed to respond to THHA’s requests or to take any action to implement these new techniques or participate in this proposed Rapid Response Network program.

In short, the warfarin poison program will make the feral-hog problem worse, not better. Hunters and trappers now remove 30-35% of the feral-hog population annually. But most hunters will not shoot poisoned hogs. And trappers cannot sell poisoned hogs to feral-meat processors. Most ranchers and farmers won’t use poison. The net effect will be that Texas will have less feral-hog control, not more. Tens of thousands of Texas hunters now participate in feral-hog control. If the risk exists that the hog shot will be poisoned, that will stop all or almost all feral-hog hunting and trapping. That will result in more feral hogs in Texas.

2. A warfarin-poison program will spread poisoned-hog carcasses onto other landowners’ property. Using warfarin (a poison commonly used in rat poison) will guarantee that the carcasses of poisoned hogs will spread across Texas lands. Warfarin is an anticoagulant. Poisoned hogs literally “bleed out”—they bleed to death, oozing blood from the nose, eyes, and anus. Death can take 9 to 20 days (one report refers to a 30-day death), but hogs can travel 5 to 20 miles in a day. That means that if one rancher uses warfarin, every other property owner within miles is at risk of having poisoned hog carcasses show up on their property. Feral hogs easily pass through normal ranch fences. That’s a recipe for an unavoidable disaster under this proposed program.

3. Texas veterinarians oppose the inhumane death. As the veterinarians of Texas recognize better than anyone else, warfarin poison results in a cruel, inhumane death. Australia tried warfarin on feral hogs and then banned the use because of

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9 See, for example, the Declaration of Dr. Darryl McDonald (D.V.M.), and the letter of Dr. Ellen Haynes (D.V.M.), included at Tab 9.
the cruel, inhumane death process.\textsuperscript{10} Because warfarin is an anticoagulant, the animals literally bleed to death over several days or even weeks.\textsuperscript{11} Veterinarians say that almost no animal death is worse to watch than when a dog dies from warfarin poisoning, which happens often when dogs eat rat poison or eats rats that have been poisoned. Vitamin K treatment is available, but it is effective only if the dog is treated in time. If not, the dog bleeds to death painfully.

The warfarin product that Sid Miller has registered and proposed for use is Kaput\textsuperscript{®}. It is manufactured by a single, sole-source provider, a company in Colorado, Scimetrics Ltd., Corp. Scimetrics touts its “special formula,” which includes a “reduced dose” of warfarin in the poison. Scimetrics claims to use only .005\% warfarin, one-fifth of the dose used in rat poison. Scimetrics claims that the lower concentration of warfarin will reduce the risk to other animals, non-target species, and humans. But lowering the dose increases the delay in the time to death for the hogs. In other words, it puts the animals in excruciating pain for an even longer period.\textsuperscript{12}

Veterinarians are not squeamish about animal pain. They see it every day in their medical practices. But the entire medical association of veterinarians in Texas opposes this warfarin-poison program—for good reason.

Hunters, too, are accustomed to dealing with animal deaths. But good, ethical hunters respect animals and certainly believe in protecting wildlife from cruelty and unnecessary suffering.

For THHA and all Texas hunters, a fundamental principle of hunting ethics is a “swift, clean kill.” Humans aren’t supposed to torture animals or prolong their death unnecessarily. For example, the Texas Parks and Wildlife Department guidelines on “Hunting Ethics” state the inviolable rule that all hunters strive to comply with: “Shoot within effective range to insure a swift, clean kill.” The prolonged, gruesome, bleeding-out death that warfarin poisoning produces is exactly the opposite of that basic principle of hunting ethics.

\textsuperscript{10} See Washington Post, February 23, 2017

\textsuperscript{11} See testimony of Michael Hare, Texas Department of Agriculture toxicologist. Tab 10, pp. 51-52; Declaration of Darryl McDonald (D.V.M.). Tabs 9.

\textsuperscript{12} A simple fact that Scimetrics and Miller have lost sight of is that feral hogs sometimes extend even longer the time period of their excruciating “bleeding out.” As mentioned above, in humans and dogs, warfarin poisoning is treated with Vitamin K. Vitamin K is in much of the forage that feral hogs eat. Thus, eating their normal forage can extend the painful death process for hogs. See testimony of Michael Hare, TDA toxicologist. Tab 10, pp. 51-52.
Finally, no study has addressed non-lethal symptoms in non-target animals. Discussions of toxicity of warfarin focus on lethal doses—for example, on how long it takes an animal to die after ingesting warfarin in various dosages. But in humans, warfarin-poisoning symptoms and side effects run the gamut. A human who ingests warfarin and has a bad reaction—for instance, starts to sustain internal bleeding—develops pain that affects behavior. The same is true in animals. But diagnosing pain levels and resulting behavioral changes in animals is more difficult than in humans. Veterinarians and many wildlife experts are concerned about that issue that thus far has had little or no study, and absolutely no study or independent study in feral hogs.

4. Sodium nitrite: (1) A better alternative? (2) A threat to Scimetrics’s get-rich-quick scheme? Neither THHA nor EDF currently favors using poison on feral hogs. However, another toxic substance—sodium nitrite—is now in development and has been for several years. Sodium nitrite is used to cure bacon. It thus has few adverse effects on humans. But sodium nitrite acts as a lethal toxin on hogs. However, the mechanism of death from sodium nitrite is very different from with warfarin. Instead of an animal “bleeding out” over many days or weeks, an animal poisoned with sodium nitrite sustains quick asphyxiation. Then the animal falls asleep—and dies within two hours. By some estimates, sodium nitrite will be ready for EPA review within one to two years. If a poison were to be appropriate and used on feral hogs, sodium nitrite is obviously a much more humane method than warfarin. The unseemly haste of Scimetrics to rush their product to market is likely influenced by the prospect of a much more effective, humane alternative becoming available very soon.

5. Feral-hog carcasses in waterways. Because animals poisoned with warfarin “bleed out,” they lose fluids while bleeding to death and they are unable to quench their thirst. Consequently the feral hogs will likely end up in or near water, stock tanks, creeks, rivers, reservoirs. No one wants 200-pound feral-hog carcasses in Texas waters, much less poisoned carcasses. But that’s what will happen.

6. Label warnings: harmful; fatal; birth defects. As an anticoagulant, warfarin is inherently a toxic substance that can cause illness and death. In humans, it can damage fetuses and can cause birth defects. The federally required label on this

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13 Side effects in humans can include, among others: severe bleeding; red or brown urine; severe headaches; severe stomach pain; vomiting of blood or material that looks like coffee grounds; weakness; dizziness; death of skin tissue (necrosis); bloating; jaundice; joint pain, discomfort, swelling; bruising; diarrhea; fever. See https://www.drugs.com/warfarin.html
14 See Declaration of Dr. Darryl McDonald (D.V.M.), Tab 9.
15 See testimony of TDA toxicologist Michael Hare, Tab 10, p. 68; Declaration of Dr. Darryl McDonald (D.V.M.), Tab 9.
16 See Declaration of Dr. Darryl McDonald (D.V.M.), Tab 9.
warfarin poison (Kaput®) has these warnings:

**“Keep Out of Reach of Children CAUTION”**

**“Hazards to Humans and Domestic Animals – CAUTION: Harmful or fatal if swallowed. Keep away from humans, domestic animals and pets”**

**“ENVIRONMENTAL HAZARDS This product may be toxic to fish, birds and other wildlife. Dogs and other predatory and scavenging mammals and birds might be poisoned if they feed upon animals that have eaten the bait.”**

**“This product contains a chemical known to the state of California to cause birth defects or other reproductive harm.”**

So the manufacturer admits—under penalty of federal law—that the Kaput® product is “harmful or fatal if swallowed”; may be “toxic to fish, birds and other wildlife”; may poison “dogs and other predatory and scavenging mammals and birds . . . if they feed upon animals”; and contains a chemical “known . . . to cause birth defects . . . .” Does that sound safe? Obviously not.

7. But Scimetrics and Miller claim that because of the low concentration of poison in the Kaput® poison, it has “acceptable risk” levels for humans and non-target species, when used in accordance with the label. That’s wrong for several reasons.

Violations of federal law. First, in the real-world setting of Texas open ranchlands—where warfarin has never been tested or studied by an independent body—it’s impossible to comply with the label. That’s important.

Indeed, the label itself states that “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.” However, in fact, violations of federal law are inevitable with use of this product.

Protective-clothing violations. For example, the label says that persons who handle feral-hog carcasses must wear protective gloves. The label is very specific about the types of protective gloves that must be used:

“When handling bait or animal carcasses, wear protective gloves made of barrier laminate, polyethylene, butyl rubber (>14 mils), nitrile rubber (>14 mils),

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17 See testimony of Michael Hare, TDA toxicologist. Tab 10, pp. 76, 78-79, 85. See excerpts from the Kaput® label at Tab 11.
mils), neoprene rubber (≥14 mils), natural rubber (≥14 mils), polyvinyl chloride (≥14 mils), or Viton (≥14 mils).

Thus, any person who handles the carcass of a poisoned feral hog must wear those specific types of gloves. But as discussed above, the bleeding-out process can take 7 to 30 days, and hogs can travel 5 to 20 miles a day. Therefore, it is inevitable that poisoned hogs will travel onto other properties. Hunters will shoot them, not knowing if they are poisoned. When the hunter starts field dressing the carcass, the hunter will touch the carcass. And the federal-law label requirement will be violated. The only way for a hunter to avoid violating federal law would be to put on gloves before touching any hog carcass. That’s not going to happen.

And consider female hunters. The label says that Kaput® “contains a chemical known to the state of California to cause birth defects or other reproductive harm.” The TDA in-house toxicologist testified under oath that the “reasonable risk” level for female exposure to warfarin is “zero.”18 No female hunter in Texas will be able to safely shoot, field dress, process, or eat a feral hog. Feral hogs that have been eating warfarin-poisoned bait will have it on their face and perhaps other parts of their bodies. A poisoned hog that has not yet died will be bleeding out the nose, eyes, and anus. As TDA’s in-house toxicologist has written, “Warfarin is considered highly toxic by inhalation and ingestion and moderately toxic by dermal absorption.”19 Texas has many thousands of female hunters. None who are pregnant or may become pregnant will have the required “zero risk” safety if warfarin poison is used on feral hogs.

8. Carcass-disposal violations. The Kaput® label, violation of which violates federal law, also has this directive concerning disposal of poisoned-hog carcasses:

“All carcasses found must be disposed of properly. Carcasses may be buried on site in holes dug deeply enough that the entire carcass is at least 18 inches below the ground surface. Cover buried carcasses up to the level of the surrounding ground. If burial is not practical (e.g., due to frozen or extremely hard ground) and other disposal methods are allowed by State and local authorities, carcasses may be disposed of by other methods to ensure that carcasses are not accessible to scavengers.”

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18 See testimony of Michael Hare, TDA toxicologist. Tab 10, pp. 78-79, 91-92. Hare also testified that people who “use alcohol” also may be more susceptible to the effects of warfarin. Tab 10, pp. 95-96.
19 Memorandum of TDA toxicologist Michael Hare, dated September 11, 2013.
So the only method specified for handling carcasses is burial 18” below the surface. In parts of Texas, that’s not even possible. And again, because feral hogs bleed to death so slowly and because they travel for miles in a day, inevitably hogs poisoned on one property will end up on another landowner’s property. Those other owners may not even know the hog carcasses are present. Those carcasses won’t get buried or otherwise “properly” disposed of. And even if that other landowner sees a dead hog, the landowner may not know the animal died from poison. Or if the landowner figures that out, he or she may refuse to properly dispose of the carcass.

9. **Blue-dye risks.** The label says that “Dye in this product will impart a blue color to the fatty tissues of hogs that have eaten the bait.” That’s supposed to “warn” humans that the hog is poisoned. But the dye doesn’t show up in the fatty tissue of a hog that has eaten the poison for approximately 24 hours after the hog has eaten the poison. A hunter who shoots the hog within 24 hours after the hog has eaten the poison won’t know that the hog contains poison. And remember, the label says “Harmful or fatal if swallowed.” That hunter is going to eat the hog, unaware of the poison. That violates the label—-with possibly severe consequences. And a pregnant female hunter who shoots and eats the hog and ingests the poison has that other risk stated on the label: “This product contains a chemical known to the state of California to cause birth defects or other reproductive harm.”

And the neighboring landowners who end up with poisoned feral-hog carcasses on their property can’t tell if the hog is poisoned or not—unless they cut open the animal to see if it has blue fatty tissue. Most ranchers don’t have the desire or time to do that. But if they do, the cost of burying a 200-pound hog, or a lot of them, can be substantial.

And remember the mad-cow-disease scare? It devastated the beef industry in the United Kingdom for years. For 15 years, the U.S. banned the import of beef from the European Union without special inspections. What will happen the first time a Texas cow shows up at the slaughter house with blue dye in its fatty tissue? The answer is plain: A Blue-Cow Scare that could dwarf the mad-cow-disease problem. Should cows be eating the warfarin bait under this plan? Of course not. Will it happen? Of course it will, given how often cows escape through fences. What will the cost be to the Texas cattle business? Once again, there’s been no study.

10. **Bait-station lid flaws: non-target-species exposure.** The Kaput® label says this about the lid on the warfarin-poison dispenser: “This bait may only be applied in

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20 See testimony of Michael Hare, TDA toxicologist. Tab 10, p. 65-66.
hog feeders equipped with heavy lids (8 to 10 lbs. of total weight on bait compartments so as to limit direct access to bait by nontarget animals.” Note the careful choice of verbs: it says “limit,” not prevent. The problem is that the lid design guarantees access by non-target species.

First, several species can lift an 8-pound lid. Consider raccoons. Texas Parks and Wildlife Department has a photo of a raccoon lifting a 28-pound lid. To state the obvious, a raccoon that can lift 28 pounds can lift 8 pounds. Many urban dwellers have firsthand experience with raccoons and their strength, dexterity, and cleverness. Raccoons will get into the bait stations. They’ll spread the bait. They and other “nontarget” animals will eat that poison. Exactly what the label says must not happen will happen.

Dr. Tyler Campbell is the foremost expert on feral-hog control in the United States. He was the Feral Swine Project Leader for the USDA Wildlife Services National Wildlife Research Center in Kingsville, Texas, from 2004 to 2011 and in Gainesville, Florida from 2011 to 2013. In that capacity, he studied the use of warfarin on feral hogs. He doesn’t recommend use of warfarin.

“The wildlife community has reasons to have concerns,” Dr. Campbell says. In addition to the inhumane death that feral hogs suffer from bleeding out over a week or more, he also is concerned about the effects of warfarin on non-target species. He says “The lid tactic won’t work.” He, too, is familiar with the studies showing raccoons lifting “much heavier lids in search of food.”

Second, feral hogs themselves will spread the bait. “Eat like a hog” is not a compliment. Table manners of feral hogs are sloppy at best. They compete against one another to get into a feeding station. They’ll spread the poison bait around the feeder. They’ll get the poison-bait on their faces. After they leave, nontarget species—squirrels, possums, deer, birds—will come to “clean up.”

Third, the Kaput® procedure requires the attraction of nontarget species. In fact, the label requires following a “conditioning” or “training” procedure that will train nontarget animals to eat at the poison bait station. Here’s what the label says:

“After the feeders are situated and secured, feral hogs must be conditioned (trained) to feed from them. To accomplish this, load the feeding

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21 See Tab 12.
22 Washington Post, February 23, 2017
compartments with a **non-toxic feed**, and open the lids to the feeding compartments by about 6 inches so that hogs can access this feed with little difficulty. . . . Provide access to non-toxic feed for three to six weeks, until the hogs are feeding readily from the bait compartments.”

If those mandatory instructions are followed—feeding from open feeders for three to six weeks—not only will the hogs learn to eat from the feeders, but so will every other animal and bird in the area. Every deer hunter who uses feeders has seen birds, squirrels, raccoons, goats, cows, and all manner of other livestock and wildlife eating from the feeders. All of those animals and wildlife will learn to be attracted to poison-dispensing feeders. By the time the stations are switched to warfarin poison after three to six weeks, the habits and expectations will be well-established. Every nontarget species that can open the lid—or wait around for some other animal to open the lid—will do so.

In short, under this seriously flawed plan—and the procedures specified in the legally binding label—nontarget-species exposure to and consumption of the warfarin poison are inevitable.

Further, as feral-hog trappers have pointed out, trapping takes far less time and effort than warfarin’s three-to-six week “conditioning” process, followed by a 7 to 30 day bleeding-out death process. Instead, just “condition” the hogs to come in the trap in a few days, trap them—and that’s it. Problem solved. Texas has never helped expand or coordinate statewide trapping efforts at a meaningful level, much less made use of the newest trapping technologies and drone-surveying techniques (discussed below).

11. **Fencing flaws.** The Kaput label says “Apply in fenced areas, if available.” Anyone who has watched feral hogs move in the wild knows that that vague instruction is completely inadequate. Hogs can cross regular ranch fences easily. Few large ranches have hog-proof fences, which are elaborate and expensive. But without a hog-proof fence, poisoned hog carcasses will inevitably end up on other landowners’ property. And even hog-proof fences won’t stop scavengers, including birds of prey. (We have photos of bald eagles feeding on carcasses and vultures eating dead hogs.) That is the exact risk that the warning label also says must be guarded against: “Dogs and other predatory and scavenging mammals and birds might be poisoned.”

And note the basic illogic of that instruction. It says apply in “fenced areas, if available.” But elsewhere the label says that the warfarin poison is toxic to wildlife and that livestock must not be allowed into a baited area. Without a fence, wildlife and livestock will have access to the poison. Thus, under their own logic, every baited area should be fenced—and fenced with a hog-proof fence. The
logical flaw in the label approach is plain. In the real world of Texas ranches with fences that feral hogs can easily pass through, the fencing instruction is fundamentally defective on its face.

12. Economic damage to Texas. Incredibly, the Texas Department of Agriculture has admitted (under oath) that it conducted no analysis or study concerning the economic damage that a warfarin-poison program will cause. In fact, Commissioner Miller’s announcement of the plan already has caused damage to Texas businesses.

The industries and businesses involved in feral-hog control generate tens of millions of dollars for the Texas economy. Hunters spend many millions of dollars to hunt and harvest feral hogs. Their expenditures include licenses, guns, ammunition, scopes, night-vision equipment, lease payments, and equipment to butcher, preserve, and prepare hogs for human consumption. Helicopter-hunting companies spend large amounts on helicopters and related equipment, and their hunting customers pay them significant fees. Trappers spend large sums on traps and bait—and land owners pay trappers. Trappers and hunters sell feral-hog meat to well over 100 collection stations, each of which is an independent Texas business. Those stations, in turn, sell feral hog meat to meat-processing companies, which process the meat and byproducts for human consumption, including excellent restaurants across Texas (such as Dai Due in Austin) and other states. The feral-meat processors also supply the national pet-food industry, including for pet treats made from noses, ears, hooves, and dehydrated-meat jerky. They also provide hides for bootmakers and other leather-products manufacturers. Meat processors sell meat abroad, generating tens of millions of dollars in sales to Asia (China is the largest consumer of pork in the world) and Europe—and those are dollars that come back into the United States and Texas.

Commissioner Miller’s announcement of his plan to spread rat poison across Texas for feral hogs already has damaged every point in that chain of Texas business and commerce.23 If this program goes into effect, the damage will be immense. And the result will be completely counterproductive for feral-hog control: This burgeoning economy is generating a greater demand for harvested feral hogs and thus a greater impetus for feral-hog control. If Commissioner Miller continues on his current path, he will cut off his nose to spite his face—and he’ll hurt Texas. The feral-hog economy will wither, and along with it, the current, ever-increasing financial incentives that are improving feral-hog harvesting and

23 See statements from Wild Boar Meats, Inc. (a feral-hog meat processor and seller to the national pet-food industry); Jesse Griffiths (owner and operator of the popular restaurant Dai Due, and a wildlife-food education school); David Gochman (an owner of Academy Sports & Outdoors). Tabs 7 and 8.
control. The plan is remarkably ill-advised. It will hurt Texas businesses, but still TDA has failed to conduct any study on those adverse economic effects.

13. The poison program will create lawsuits, not feral-hog control. This program, if it goes into effect, will create an unprecedented wave of litigation in Texas. As discussed above, if a landowner poisons hogs, the poisoned hogs live for several days or weeks and can travel several miles a day. They will end up on other landowners’ property. Those other landowners will not want the contamination of their property—or the cost of carcass burial and the clean-up of the blood-discharge trails that the bleeding-out hogs have spread. Clean-up and restoration costs will be massive across Texas.

Lawsuits by neighboring landowners who end up with dead hog carcasses on their property are highly likely, including claims for nuisance. See, e.g., Barnes v. Mathis, 353 S.W.3d 760, 763 (Tex.2011) (allowing a nuisance suit when a plaintiff shows: (1) the plaintiff owns land; (2) the defendant interferes with the plaintiff's interest by negligent or intentional conduct; (3) the resulting interferes with the plaintiff's use and enjoyment of his land; and (4) the nuisance injured the plaintiff).

Similarly, a rancher or other property owner can file a damages claim for trespass if another landowner or a pesticide applicator knowingly allows a poisoned hog to enter the other person’s property. See the Texas Supreme Court trespass-claims decisions in Railroad Commission v. Manziel, 361 S.W.2d 560 (Tex. 1962); Greg v. Delhi-Taylor Oil Corp., 344 S.W.2d 411 (Tex. 1961); Michol O’Connor, O’Connor’s Texas Causes of Action (2016), pp. 1005-1018.

Anyone who uses the warfarin-based poison on feral hogs other than on a hog-proof fenced property knows that the poisoned hogs are likely to die on property owned by others.

Texas doesn’t need more lawsuits. Texas needs effective feral-hog control. But a warfarin-poison program will undermine feral-hog control and give rise to lawsuits.

14. TDA violated its own statute by registering the warfarin poison and failing to cancel the registration. TDA improperly and in violation of law registered Kaput® as a pesticide in Texas on February 6, 2017. Texas Agriculture Code § 76.046 expressly requires that TDA “shall determine” whether to set a hearing to deny registration to a pesticide if the department has “reason to believe” that use of the pesticide is “dangerous or harmful.” TDA never made such a determination. The evidence discussed in this letter makes clear that TDA has “reason to believe” that Kaput® is harmful. But TDA failed to make a hearing determination or set a
hearing. Additionally, after TDA issues a registration, § 76.046 requires TDA to make the same determination concerning whether a hearing should be held to cancel a registration if TDA develops “reason to believe” that the pesticide is dangerous or harmful. TDA has failed and refused to make the statutorily required determination. If TDA were to do so, based on the indisputable evidence, TDA would have to initiate the hearing process.

That TDA has failed to follow that statutory procedure is unfortunate but unsurprising. A TDA representative testified that TDA has never followed that hearing procedure.

Further, a district court recently issued a Temporary Restraining Order against the “emergency” rule that TDA had issued. The Court ruled that TDA had violated the Texas Administrative Procedure Act.

Under Commissioner Miller, TDA has become an insular law- unto-itsel agency—willing to sacrifice both its own legal obligations and the public interest in avoiding damage from “dangerous or harmful” pesticides. Clearly, the only effective remedy is legislative action.

15. EPA “approval.” TDA has suggested that EPA “approved” Kaput® by registering it and therefore TDA had no choice but to register the product in Texas. That argument is wrong for several reasons.

First, EPA did not conduct any studies or have before it any independent study of the possible adverse effects of warfarin for use on feral hogs in Texas (or any other state). What happened was that EPA had previously registered warfarin for use on rats. That preexisting registration enabled Scimetrics to “fly under the radar” and obtain approval without any new substantive analysis—even though, to state the obvious, an 8-ounce rat in a house is very different than 200-pound hogs roaming across Texas open ranch lands.

In fact, when EPA routinely issued the pro forma registration for Kaput®, EPA did not receive a single comment on the proposed registration and EPA conducted no public hearing. No one noticed—not hunters, environmentalists, wildlife-rescue facilities, veterinarians, etc. But as a result of the illegal “emergency” rule that TDA issued in Texas, all of those groups and individuals have noticed. But TDA also failed to conduct any studies before issuing its “emergency” rule.24

Second, EPA (like Texas) has a registration-cancellation procedure. Several groups—including THHA, EDF, Sierra Club, and others—are now in the process of working on a petition to cancel Kaput®’s EPA registration. Scimetrics made a

\[24\] See testimony of Michael Hare, TDA toxicologist. Tab 10, p. 111.
one-sided, confidential submission to EPA, and in our view, substantially misled EPA. We are confident that that registration-cancellation effort will succeed. But it will take time, which provides further support for the proposed legislation.

Third, the Texas registration process is completely separate from an EPA registration. As discussed above, TDA has a statutory obligation to determine whether it has reason to believe that a pesticide is “dangerous or harmful” under Texas Agriculture Code § 76.046. If a pesticide is dangerous or harmful, TDA should initiate a hearing to deny registration or, if TDA has already granted registration, should initiate a hearing to cancel the registration.

16. Proper studies and planning—and Scimetrics’s own recommendations. A key point of the legislation is that Texas should study warfarin poison before allowing its use on feral hogs. Study first before poisoning. Absolutely no independent study has been conducted on warfarin poisoning of feral hogs in the real-world setting of open Texas ranchlands.

The only studies that TDA witnesses have cited on the use of warfarin on feral hogs in Texas were studies by Scimetrics—the very company that stands to make millions of dollars off of warfarin poison use for feral hogs. That’s the opposite of “independent study.”

But what did Scimetrics recommend after its own (only partially disclosed) experiments in 2008? Scimetrics’s report contained these recommendations—none of which has been implemented:

*“A key to development of this product will be coordination with wildlife agencies.”

*“Since feral hogs are often considered a game species, [1] the timing of baiting, [2] the amount of product used, and [3] the specifics of the applications will have to be coordinated with these state agencies.”

*“It will be best to arrange for baiting when little hunting pressure is an issue. State may have to prohibit hog hunting in densely pig populated counties until the numbers are under control.”

*“A management plan will have to be developed with state authorities to ensure human and wildlife safety.”

None of that has happened. No “coordination with state agencies”; no coordination

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of the timing of baiting, the amount used, or specifics of application; no prohibition on hog hunting in densely pig populated counties; and no “management plan . . . to ensure human and wildlife safety.

Thus, even the recommendations of the Kaput® manufacturer have not been followed. TDA’s in-house toxicologist agreed with those recommendations. But TDA hasn’t adopted or implemented those recommendations. Instead, we have a rush to poison.

Texas should do exactly what the legislation requires: study first before poisoning.

17. Proper feral-hog control. So what should be done about feral hogs in Texas? THHA and EDF absolutely agree that feral-hog control is necessary. Feral hogs are an invasive species and cause substantial harm to agricultural and other interests in Texas. But they are not a new problem; they arrived in Texas with Hernando de Soto in 1542, and their population began mushrooming in the 1980s.

As discussed above, one thing is absolutely clear: what should not be done is use warfarin poisoning. That will have exactly the opposite effect from the desired feral-hog control because the numbers of feral hogs will increase not decrease. By some estimates, hunters and trappers harvest 30% of the feral hogs annually. If poison is used across Texas on feral hogs, hunters won’t shoot hogs to eat, and trappers won’t trap hogs to sell the meat. Those established and effective methods of feral-hog control will cease or be drastically reduced. Texas will have more feral hogs, not less.

So what should be done? Build on what works. Focus on and expand proven methods, take advantage of new technology, and support the burgeoning industry that is stimulating substantial increases in feral-hog control.

First, support the existing solutions, hunting and trapping, and implement the new technologies. Strides in technology have made it possible to accurately survey feral-hog populations. Drones equipped with thermal-imaging cameras can map with great accuracy feral-hog populations and movements. We’ve never had that technology before. And no Texas agency (including TDA) has made any effort to implement that technology on even a localized basis to establish a sensible feral-hog control program. Private companies and public entities across the world are

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26 See testimony of Michael Hare, TDA toxicologist. Tab 10, pp. 102, 104-05.
27 Of course even non-invasive species and valued game animals, like whitetail deer, can cause harm to agricultural interests when their numbers reach excessive levels. Some parts of Texas have experienced that type of problem as well in the past.
28 See Professor Billy Higginbotham, Frequently Asked Questions—Wild Pigs (Texas A&M AgriLife Extension Service) http://feralhogs.tamu.edu/frequently-asked-questions/frequently-asked-questions-wild-pigs/
now using these drone resources to study wildlife, to monitor and prevent poaching, and for many other purposes—including even herding invasive species away from vulnerable agricultural sites.\(^{29}\) Texas should take advantage of those same technologies and resources. But neither TDA nor any other agency has done that.

Second, the State should encourage and facilitate a systematic feral-hog population assessment and control program. That could start in one region of the State, or even one county. Survey and map the feral-hog population in that area, and then establish control of that population. That’s not rocket science, but it’s never been done. Now we have the technology to do it.

Third, support the use of these new technologies. In addition to drones, trappers now have remote-activated and motion-activated traps and trapping systems. A trapper can install the trap, and then monitor the presence of feral hogs in real time through a smart phone and a motion-activated camera. That’s being done now.

Fourth, support the efforts of THHA and others to develop a Rapid Response Network (RNN). Here’s how that can work: THHA is developing a smart-phone app to match ranchers, farmers, and other property owners with hunters and trappers. The goal should be to have a 24-hour response time. So if a peanut farmer near Pleasanton has an influx of feral hogs into his or her crop, the farmer can get immediate assistance. The THHA program will match specific needs with specific availability, have form agreements for easy use, available insurance for mutual protection, and several other features that are now in rapid development. THHA has proposed that to Commissioner Miller and he has refused.

Note that in the example above of the peanut-farmer in Pleasanton, warfarin poison is useless. Remember that according to the label instructions, it takes 3 to 6 weeks of “conditioning” feral hogs before use of the warfarin-poisoned bait. And then it takes another 7 to 30 days for a feral hog to die. That’s a total of 4 weeks to 10 weeks. That peanut farmer with hogs in the crop today needs help today. In the 4 to 10 weeks that the warfarin-program requires, the crop will be eaten or

\(^{29}\) Many websites describe and chronicle the use of drones in wildlife studies, poaching prevention, and agriculture. See for example:

https://www.pri.org/stories/2014-10-25/5-ways-drones-are-making-world-better-place-without-killing-anyone ; http://www.nature.com/articles/srep22574 ;
https://www.airbornedrones.co/pages/farming-drones ;
https://www.airbornedrones.co/pages/farming-drone ;
harvested. Poison is worthless when immediate help is needed.  

Conclusion

In our view, it’s difficult to overstate the importance of enacting this legislation. If the warfarin-poison program proceeds, the damage to Texas, Texas hunters, the economy, wildlife, and the environment will be dramatic. We urge the Legislature to pass H.B. 3451 and S.B. 1454 as soon as possible.

Thank you for considering this information, and please contact us if we can provide any additional information.

Sincerely,

Scott Dover
President
Texas Hog Hunters Association

Jim Marston
Founding Director
Environmental Defense Fund

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30 As discussed above, neither THHA nor EDF currently supports the use of any poison, but the sodium-nitrite poison that is now in development and that is purportedly much less harmful to humans and wildlife acts within 2 hours, not the 7 to 30 days required for warfarin. However, because “conditioning” of hogs to eat that poison also would be necessary, the Rapid Response Network would be a superior method for feral-hog control. Another technique now being employed to protect vulnerable agricultural sites is the use of drones, which can locate and identify feral hogs at night using thermal-imaging cameras and can herd feral hogs away from crops. TDA has not done that either.