

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

2

SENATE BILL 1217*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/12/96

Short Title: Animal Waste Recommendations.

(Public)

Sponsors:

Referred to: Finance.

May 20, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE BLUE RIBBON STUDY
3 COMMISSION ON AGRICULTURAL WASTE.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 21 of Chapter 143 of the General Statutes is amended by
6 adding a new Part to read:

7 **"PART 1A. ANIMAL WASTE MANAGEMENT SYSTEMS.**

8 **"§ 143-215.10A. Legislative findings and intent.**

9 The General Assembly finds that animal operations provide significant economic and
10 other benefits to this State. The growth of animal operations in recent years has increased
11 the importance of good animal waste management practices to protect water quality. It is
12 critical that the State balance growth with prudent environmental safeguards. It is the
13 intention of the State to promote a cooperative and coordinated approach among the
14 agencies of the State to animal waste management with a primary emphasis on technical
15 assistance to farmers. To this end, the General Assembly intends to establish a permitting
16 program for animal waste management systems that will protect water quality and
17 promote innovative systems and practices while minimizing the regulatory burden.
18 Technical assistance, through operations reviews, will be provided by the Division of Soil

1 and Water Conservation. Permitting, inspection, and enforcement will be vested in the
2 Division of Environmental Management.

3 **"§ 143-215.10B. Definitions.**

4 As used in this Part:

- 5 (1) 'Animal operation' means any agricultural farming activity involving
6 250 or more swine, 100 or more confined cattle, 75 or more horses,
7 1,000 or more sheep, or 30,000 or more confined poultry with a liquid
8 animal waste management system.
- 9 (2) 'Animal waste' means livestock or poultry excreta or a mixture of
10 excreta with feed, bedding, litter, or other materials from an animal
11 operation.
- 12 (3) 'Animal waste management system' means a combination of structures
13 and nonstructural practices serving a feedlot that provide for the
14 collection, treatment, storage, or land application of animal waste.
- 15 (4) 'Division' means the Division of Environmental Management of the
16 Department.
- 17 (5) 'Feedlot' means a lot or building or combination of lots and buildings
18 intended for the confined feeding, breeding, raising, or holding of
19 animals and either specifically designed as a confinement area in which
20 animal waste may accumulate or where the concentration of animals is
21 such that an established vegetative cover cannot be maintained. A
22 building or lot is not a feedlot unless animals are confined for 52 or
23 more days, which may or may not be consecutive, in a 12-month period.
24 Pastures shall not be considered feedlots for the purposes of this Part.
- 25 (6) 'Technical specialist' means an individual designated by the Soil and
26 Water Conservation Commission, pursuant to rules adopted by that
27 Commission, to certify animal waste management plans.

28 **"§ 143-215.10C. Applications and permits.**

29 (a) No person shall construct or operate an animal waste management system
30 without first obtaining a permit under this Part. The Commission shall develop a system
31 of general permits for animal operations based on species, number of animals, and other
32 relevant factors.

33 (b) An animal waste management system shall be designed, constructed, and
34 operated so that the animal operation served by the animal waste management system
35 does not cause pollution in the waters of the State except as may result because of rainfall
36 from a storm event more severe than the 25-year, 24-hour storm.

37 (c) The Commission shall act on a permit application as quickly as possible and
38 may conduct any inquiry or investigation it considers necessary before acting on an
39 application. If the Commission fails to act on an application for a permit, including a
40 renewal of a permit, within 90 days after the applicant submits all information required
41 by the Commission, the application is considered to be approved.

42 (d) All applications for permits or for renewal of an existing permit shall be in
43 writing, and the Commission may prescribe the form of the applications. All applications

1 shall include an animal waste management system plan approved by a technical
2 specialist. The Commission may require an applicant to submit additional information the
3 Commission considers necessary to evaluate the application. Permits and renewals
4 issued pursuant to this section shall be effective until the date specified therein or until
5 rescinded unless modified or revoked by the Commission.

6 (e) Animal waste management plans shall include all of the following
7 components:

8 (1) A checklist of potential odor sources and a choice of site-specific, cost-
9 effective remedial best management practices to minimize those
10 sources.

11 (2) A checklist of potential insect sources and a choice of site-specific, cost-
12 effective best management practices to minimize insect problems.

13 (3) Provisions that set forth acceptable methods of disposing of mortalities.

14 (4) Provisions regarding best management practices for riparian buffers or
15 equivalent controls, particularly along perennial streams.

16 (5) Provisions regarding the use of emergency spillways and site-specific
17 emergency management plans that set forth operating procedures to
18 follow during emergencies in order to minimize the risk of
19 environmental damage.

20 (6) Provisions regarding periodic testing of waste products used as nutrient
21 sources as close to the time of application as practical and at least within
22 60 days of the date of application and periodic testing, at least annually,
23 of soils at crop sites where the waste products are applied. Nitrogen
24 shall be the rate-determining element. Zinc and copper levels in the
25 soils shall be monitored, and alternative crop sites shall be used when
26 these metals approach excess levels.

27 (7) Provisions regarding waste utilization plans that assure a balance
28 between nitrogen application rates and nitrogen crop requirements, that
29 assure that lime is applied to maintain pH in the optimum range for crop
30 production, and that include corrective action, including revisions to the
31 waste utilization plan based on data of crop yields and crops analysis,
32 that will be taken if this balance is not achieved as determined by testing
33 conducted pursuant to subdivision (6) of this subsection.

34 (8) Provisions regarding the completion and maintenance of records on
35 forms developed by the Department, which records shall include
36 information addressed in subdivisions (6) and (7) of this subsection,
37 including the dates and rates that waste products are applied to soils at
38 crop sites, and shall be made available upon request by the Department.

39 (f) Dry litter animal waste management systems involving 30,000 or more birds
40 shall obtain an animal waste management plan that complies with the testing and record-
41 keeping requirements under subdivisions (6) through (8) of subsection (e) of this section.
42 Any operator of this type of animal waste management system shall retain records
43 required under this section and by the Department on-site for three years.

1 (g) The Commission shall encourage the development of alternative and
2 innovative animal waste management technologies. The Commission shall provide
3 sufficient flexibility in the regulatory process to allow for the timely evaluation of
4 alternative and innovative animal waste management technologies and shall encourage
5 operators of animal waste management systems to participate in the evaluation of these
6 technologies. The Commission shall provide sufficient flexibility in the regulatory
7 process to allow for the prompt implementation of alternative and innovative animal
8 waste management technologies that are demonstrated to provide improved protection to
9 public health and the environment.

10 **"§ 143-215.10D. Operations review.**

11 (a) The Division, in cooperation with the Division of Soil and Water
12 Conservation, shall develop a reporting procedure for use by technical specialists who
13 conduct operations reviews of animal operations. The reporting procedure shall be
14 consistent with the Division's inspection procedure of animal operations and with this
15 Part. The report shall include any corrective action recommended by the technical
16 specialist to assist the owner or operator of the animal operation in compliance with all
17 permit requirements. The report shall be submitted to the Division within 10 days
18 following the operations review unless the technical specialist observes a violation
19 described in G.S. 143-215.10E. If the technical specialist finds a violation described in
20 G.S. 143-215.10E, the report shall be filed with the Division immediately.

21 (b) As part of its animal waste management plan, each animal operation shall have
22 an operations review at least once a year. The operations review shall be conducted by a
23 technical specialist employed by the Division of Soil and Water Conservation of the
24 Department, a local Soil and Water Conservation District, or the Federal Natural
25 Resources Conservation Services working under the direction of the Division of the
26 Division of Soil and Water Conservation.

27 (c) Operations reviews shall not be performed by technical specialists with a
28 financial interest in any animal operation.

29 **"§ 143-215.10E. Violations requiring immediate notification.**

30 (a) Any employee of a State agency or unit of local government who observes any
31 of the following violations shall immediately notify the Division:

- 32 (1) Any direct discharge of animal waste into the waters of the State.
- 33 (2) Any deterioration or leak in a lagoon system that poses an immediate
34 threat to the environment.
- 35 (3) Failure to maintain adequate storage capacity in a lagoon that poses an
36 immediate threat to public health or the environment.
- 37 (4) Overspraying animal waste either in excess of the limits set out in the
38 animal waste management plan or where runoff enters waters of the
39 State.
- 40 (5) Any discharge that bypasses a lagoon system.

41 (b) Any employee of a federal agency who observes any of the above violations is
42 encouraged to immediately notify the Division.

43 **"§ 143-215.10F. Inspections.**

1 The Division shall conduct inspections of all animal operations that are subject to a
2 permit under G.S. 143-215.10C at least once a year to determine whether the system is
3 causing a violation of water quality standards and whether the system is in compliance
4 with its animal waste management plan or any other condition of the permit.

5 **"§ 143-215.10G. Fees for animal waste management systems.**

6 (a) The Department shall charge an annual permit fee for animal waste
7 management systems according to the following schedule:

8 (1) For a system with a design capacity of 38,500 or more and less than
9 100,000 pounds steady state live weight, fifty dollars (\$50.00).

10 (2) For a system with a design capacity of 100,000 or more and less than
11 800,000 pounds steady state live weight, one hundred dollars (\$100.00).

12 (3) For a system with a design capacity of 800,000 pounds or more state
13 live weight, two hundred dollars (\$200.00).

14 (b) The total monies collected each year from fees under this section shall not
15 exceed forty percent (40%) of the total budgets from all sources of permitting and
16 compliance programs for animal waste management systems within the Department."

17 Sec. 2. G.S. 143-215.1(a) reads as rewritten:

18 "(a) Activities for Which Permits Required. – No person shall do any of the
19 following things or carry out any of the following activities ~~until or unless such that~~
20 person ~~shall have applied for and shall have~~ has received a permit from the Commission a
21 ~~permit therefor and shall have and has~~ complied with such conditions, if any, as are prescribed
22 ~~by such all conditions set forth in the permit:~~

23 (1) Make any outlets into the waters of the ~~State;~~ State.

24 (2) Construct or operate any sewer system, treatment works, or disposal
25 system within the ~~State;~~ State.

26 (3) Alter, extend, or change the construction or method of operation of any
27 sewer system, treatment works, or disposal system within the ~~State;~~
28 State.

29 (4) Increase the quantity of waste discharged through any outlet or
30 processed in any treatment works or disposal system to any extent ~~which~~
31 that would result in any violation of the effluent standards or limitations
32 established for any point source or ~~which that~~ would adversely affect the
33 condition of the receiving waters to the extent of violating any ~~of the~~
34 standards applicable to such water; applicable standard.

35 (5) Change the nature of the waste discharged through any disposal system
36 in any way ~~which that~~ would exceed the effluent standards or limitations
37 established for any point source or ~~which that~~ would adversely affect the
38 condition of the receiving waters in relation to any ~~of the standards~~
39 applicable to such waters; applicable standards.

40 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
41 in any manner intermixed with the waters of the State in violation of the
42 water quality standards applicable to the assigned classifications or in
43 violation of any effluent standards or limitations established for any

1 point source, unless allowed as a condition of any permit, special order
2 or other appropriate instrument issued or entered into by the
3 Commission under the provisions of this ~~Article~~; Article.

4 (7) Cause or permit any wastes for which pretreatment is required by
5 pretreatment standards to be discharged, directly or indirectly, from a
6 pretreatment facility to any disposal system or to alter, extend or change
7 the construction or method of operation or increase the quantity or
8 change the nature of the waste discharged from or processed in ~~such~~
9 ~~facility~~; that facility.

10 (8) Enter into a contract for the construction and installation of any outlet,
11 sewer system, treatment works, pretreatment facility or disposal system
12 or for the alteration or extension of any such ~~facilities~~; facility.

13 (9) Dispose of sludge resulting from the operation of a treatment works,
14 including the removal of in-place sewage sludge from one location and
15 its deposit at another location, consistent with the requirement of the
16 Resource Conservation and Recovery Act and regulations promulgated
17 pursuant ~~thereto~~; thereto.

18 (10) Cause or permit any pollutant to enter into a defined managed area of
19 the State's waters for the maintenance or production of harvestable
20 freshwater, estuarine, or marine plants or ~~animals~~; animals.

21 (11) Cause or permit discharges regulated under G.S. 143-214.7 ~~which~~ that
22 result in water pollution.

23 (12) Construct or operate an animal waste management system, as defined in
24 G.S. 143-215.10B, without obtaining a permit under Part 1A of this
25 Article.

26 (a1) In the event that both effluent standards or limitations and classifications and
27 water quality standards are applicable to any point source or sources and to the waters to
28 which they discharge, the more stringent among the standards established by the
29 Commission shall be applicable and controlling.

30 (a2) ~~In connection with the above, no such~~ No permit shall be granted for the disposal
31 of waste in waters classified as sources of public water supply where the head of the
32 agency ~~which~~ that administers the public water supply program pursuant to Article 10 of
33 Chapter 130A of the General Statutes, after review of the plans and specifications for the
34 proposed disposal facility, determines and advises the Commission that ~~such~~ any outlet
35 for the disposal of waste is is, or would be, sufficiently close to the intake works or
36 proposed intake works of a public water supply as to have an adverse effect on the public
37 health.

38 (a3) ~~In any case where the Commission denies a permit, it~~ If the Commission denies an
39 application for a permit, the Commission shall state in writing the reason for ~~such~~ the
40 denial and shall also state the Commission's estimate of the changes in the applicant's
41 proposed activities or plans ~~which will~~ that would be required in order that the applicant
42 may obtain a permit."

43 Sec. 3. G.S. 143-215.2(a) reads as rewritten:

1 "(a) Issuance. – The Commission ~~is hereby empowered, may,~~ after the effective date
2 of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S.
3 143-215, or a water supply watershed management requirement adopted pursuant to G.S.
4 143-214.5, ~~to issue (and issue, and from time to time to modify or revoke)~~ may modify or
5 revoke, a special order, or other appropriate instrument, to any person whom it finds
6 responsible for causing or contributing to any pollution of the waters of the State within
7 the area for which standards have been established. ~~Such an~~ The order or instrument may
8 direct ~~such the~~ person to take, or refrain from taking ~~such an~~ action, or to achieve ~~such~~
9 ~~results, a result,~~ within a period of time specified by ~~such the~~ special order, as the
10 Commission deems necessary and feasible in order to alleviate or eliminate ~~such the~~
11 pollution. The Commission is authorized to enter into consent special orders, assurances
12 of voluntary compliance or other similar documents by agreement with the person
13 responsible for pollution of the water, subject to the provisions of subsection (a1) of this
14 section regarding proposed orders, and ~~such the~~ consent order, when entered into by the
15 Commission after public review, shall have the same force and effect as a special order of
16 the Commission issued pursuant to hearing. ~~Provided, however, that the provisions of this~~
17 ~~section shall not apply to any agricultural operation, such as the use or preparation of any land~~
18 ~~for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural~~
19 ~~products, or raising livestock or poultry."~~

20 Sec. 4. G.S. 143-215(e) reads as rewritten:

21 "(e) Except as required by federal law or regulations, the Commission may not
22 adopt effluent standards or limitations applicable to animal and poultry feeding
23 operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other
24 conveyances have been constructed for the purpose of willfully discharging pollutants to
25 the waters of the State, the Secretary shall have the authority to assess fines and penalties
26 not to exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) for the first
27 offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July
28 1, 1990 Edition) shall apply to this subsection."

29 Sec. 5. G.S. 143B-301(a) reads as rewritten:

30 "(a) The Water Pollution Control System Operators Certification Commission shall
31 consist of 11 members. Two members shall be from the animal agriculture industry and
32 shall be appointed by the Commissioner of Agriculture. ~~nine~~ Nine members shall be
33 appointed by the Secretary of Environment, Health, and Natural Resources with the
34 approval of the Environmental Management Commission with the following
35 qualifications:

- 36 (1) Two members shall be currently employed as water pollution control
37 facility operators, water pollution control system superintendents or
38 directors, water and sewer superintendents or directors, or equivalent
39 positions with a North Carolina municipality;
- 40 (2) One member shall be manager of a North Carolina municipality having
41 a population of more than 10,000 as of the most recent federal census;
- 42 (3) One member shall be manager of a North Carolina municipality having
43 a population of less than 10,000 as of the most recent federal census;

- 1 (4) One member shall be employed by a private industry and shall be
2 responsible for supervising the treatment or pretreatment of industrial
3 wastewater;
- 4 (5) One member who is a faculty member of a four-year college or
5 university and whose major field is related to wastewater treatment;
- 6 (6) One member who is employed by the Department of Environment,
7 Health, and Natural Resources and works in the field of water pollution
8 control, who shall serve as Chairman of the Commission;
- 9 (7) One member who is employed by a commercial water pollution control
10 system operating firm; and
- 11 (8) One member shall be currently employed as a water pollution control
12 system collection operator, superintendent, director, or equivalent
13 position with a North Carolina municipality."

14 Sec. 6. (a) The title of Article 3 of Chapter 90A reads as rewritten:

15 **"ARTICLE 3.**

16 ~~Certification of Water Pollution Control System Operators.~~ Operators and
17 **ANIMAL WASTE MANAGEMENT SYSTEM OPERATORS.**

18 Part 1. Certification of Water Pollution Control System Operators."

19 (b) Article 3 of Chapter 90A of the General Statutes, as amended by subsection (a)
20 of this section, is amended by adding a new Part to read:

21 "Part 2. Certification of Animal Waste Management System Operators.

22 "**§ 90A-47. Purpose.**

23 The purpose of this Part is to reduce nonpoint source pollution in order to protect the
24 public health and to conserve and protect the quality of the State's water resources, to
25 encourage the development and improvement of the State's agricultural land for the
26 production of food and other agricultural products, and to require the examination of
27 animal waste management system operators and certification of their competency to
28 operate or supervise the operation of those systems.

29 "**§ 90A-47.1. Definitions.**

30 (a) As used in this Part:

- 31 (1) 'Animal waste' means liquid residuals resulting from an animal
32 operation that are collected, treated, stored, or applied to the land
33 through an animal waste management system.
- 34 (2) 'Application' means laying, spreading on, irrigating, or injecting animal
35 waste onto land.
- 36 (3) 'Commission' means the Water Pollution Control System Operators
37 Certification Commission.
- 38 (4) 'Owner' means the person who owns or controls the land used for
39 agricultural purposes or the person's lessee or designee.
- 40 (5) 'Operator in charge' means a person who holds a currently valid
41 certificate to operate an animal waste management system and who has
42 primary responsibility for the operation of the system.

1 (b) The definitions set out in G.S. 143-215.10B, other than the definition of
2 'animal waste', apply to this Part.

3 **"§ 90A-47.2. Certified operator in charge required; qualifications for certification.**

4 (a) No owner or other person in control of an animal operation having an animal
5 waste management system shall allow the system to be operated by a person who does
6 not hold a valid certificate as an operator in charge of an animal waste management
7 system issued by the Commission. No person shall perform the duties of an operator in
8 charge of an animal waste management system without being certified under the
9 provisions of this Part. Other persons may assist in the operation of an animal waste
10 management system so long as they are directly supervised by an operator in charge who
11 is certified under this Part and who is physically present on the site of the animal
12 operation.

13 (b) The owner or other person in control of an animal operation may contract with
14 a certified animal waste management system operator in charge to provide for the
15 operation of the animal waste management system at that animal operation. The
16 Commission may adopt rules requiring that any certified animal waste management
17 system operator in charge contracting with one or more owners or other persons in
18 control of an animal operation file an annual report with the Commission as to the
19 operations of each system at which the services of the operator in charge are provided.

20 **"§ 90A-47.3. Qualifications for certification; training; examination.**

21 (a) The Commission shall develop and administer a certification program for
22 animal waste management system operators in charge that provides for receipt of
23 applications, training and examination of applicants, and investigation of the
24 qualifications of applicants.

25 (b) The Commission, in cooperation with the Division of Environmental
26 Management of the Department of Environment, Health, and Natural Resources, and the
27 Cooperative Extension Service, shall develop and administer a training program for
28 animal waste management system operators in charge. An applicant for initial
29 certification shall complete 10 hours of classroom instruction prior to taking the
30 examination. In order to remain certified, an animal waste management system operator
31 in charge shall complete six hours of approved additional training during each three-year
32 period following initial certification. A certified animal waste management system
33 operator in charge who fails to complete approved additional training within 30 days of
34 the end of the three-year period shall take and pass the examination for certification in
35 order to renew the certificate.

36 **"§ 90A-47.4. Fees; certificate renewals.**

37 (a) An applicant for certification under this Part shall pay a fee of ten dollars
38 (\$10.00) for the examination and the certificate.

39 (b) The certificate shall be renewed annually upon payment of a renewal fee of ten
40 dollars (\$10.00). A certificate holder who fails to renew the certificate and pay the
41 renewal fee within 30 days of its expiration shall be required to take and pass the
42 examination for certification in order to renew the certificate.

43 **"§ 90A-47.5. Suspension; revocation of certificate.**

1 (a) The Commission, in accordance with the provisions of Chapter 150B of the
2 General Statutes, may suspend or revoke the certificate of any operator in charge who:

3 (1) Engages in fraud or deceit in obtaining certification.

4 (2) Fails to exercise reasonable care, judgment, or use of the operator's
5 knowledge and ability in the performance of the duties of an operator in
6 charge.

7 (3) Is incompetent or otherwise unable to properly perform the duties of an
8 operator in charge.

9 (b) In addition to revocation of a certificate, the Commission may levy a civil
10 penalty, not to exceed one thousand dollars (\$1,000) per violation, for willful violation of
11 the requirements of this Part.

12 **"§ 90A-47.6. Rules.**

13 The Commission shall adopt rules to implement the provisions of this Part."

14 Sec. 7. (a) Article 67 of Chapter 106 of the General Statutes reads as rewritten:

15 **"ARTICLE 67.**

16 **"SWINE FARMS.**

17 **"§ 106-800. Title.**

18 This Article shall be known as the 'Swine Farm Siting Act'.

19 **"§ 106-801. Purpose.**

20 The General Assembly finds that certain limitations on the siting of swine houses and
21 lagoons for ~~larger swine farms~~ can assist in the development of pork ~~production to~~
22 ~~contribute production, which contributes~~ to the economic development of the State ~~while~~
23 ~~minimizing any State, by lessening the~~ interference with the use and enjoyment of
24 adjoining property.

25 **"§ 106-802. Definitions.**

26 As used in this Article, unless the context clearly requires otherwise:

27 (1) 'Lagoon' means a confined body of water to hold animal byproducts
28 including bodily waste from animals or a mixture of waste with feed,
29 bedding, litter or other agricultural ~~materials without discharge to surface~~
30 ~~waters of the State except in the event of a storm more severe than the 25-~~
31 ~~year, 24-hour storm materials.~~

32 (2) ~~'New swine farm' means any swine farm whose operations were sited on~~
33 ~~or after October 1, 1995. Renovation and reconstruction of existing~~
34 ~~farms does not constitute a 'new swine farm'.~~

35 (3) 'Occupied residence' means a dwelling actually inhabited by a person on
36 a continuous basis as exemplified by a person living in his or her home.

37 (4) ~~'Siting' or 'site'~~ 'Site evaluation' means an investigation to determine if a
38 site meets all federal and State standards as evidenced by the Waste
39 Management Facility Site Evaluation Report on file with the ~~Natural~~
40 ~~Resources Conservation Service~~ Soil and Water Conservation District
41 office or a comparable report certified by a professional engineer or a
42 comparable report certified by a technical specialist approved by the
43 North Carolina Soil and Water Conservation ~~Commission and either of~~

1 which report provides the basis for certification by the Division of
2 Environmental Management pursuant to the rules appearing in the North
3 Carolina Administrative Code governing waste not discharged to surface
4 waters. Commission.

5 (5) 'Swine farm' means a tract of land devoted to raising 250 or more
6 animals of the porcine species.

7 (6) 'Swine house' means a building that shelters porcine animals on a
8 continuous basis.

9 **"§ 106-803. Requirements ~~Siting requirements~~ for siting swine houses and lagoons.**
10 **houses, lagoons, and land areas onto which waste is applied at swine**
11 **farms.**

12 (a) A swine house or a lagoon that is a component of a swine farm shall be located
13 at least 1,500 feet from any occupied residence; at least 2,500 feet from any school,
14 hospital, or church; and at least ~~400~~ 500 feet from any property boundary. The outer
15 perimeter of the land area onto which waste is applied from a lagoon that is a component
16 of a swine farm shall be at least 50 feet from any ~~residential property boundary~~ boundary of
17 property on which an occupied residence is located and from any perennial stream or
18 river, other than an irrigation ditch or canal.

19 (b) A swine house or a lagoon that is a component of a swine farm may be ~~sited~~
20 located closer to a residence, school, hospital, church, or a property boundary than is
21 allowed under subsection (a) of this section if written permission is given by the owner of
22 the property and recorded with the Register of Deeds.

23 **"§ 106-804. Enforcement.**

24 (a) Any person owning property directly affected by the siting requirements of
25 G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a
26 swine farmer who has violated G.S. 106-803 and may seek any one or more of the
27 following:

28 (1) Injunctive relief.

29 (2) An order enforcing the siting requirements under G.S. 106-803.

30 (3) Damages caused by the violation.

31 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
32 the person owns:

33 (1) An occupied residence located less than 1,500 feet from a swine house
34 or lagoon in violation of G.S. 106-803.

35 (2) A school, hospital, or church located less than 2,500 feet from a swine
36 house or lagoon in violation of G.S. 106-803.

37 (3) Property whose boundary is located less than 500 feet from a swine
38 house or lagoon in violation of G.S. 106-803.

39 (4) Property on which an occupied residence is located and whose boundary
40 is less than 50 feet from the outer perimeter of the land area onto which
41 waste is applied from a lagoon that is a component of a swine farm in
42 violation of G.S. 106-803.

1 (5) Property that abuts a perennial stream or river, or on which a perennial
2 stream or river is located, and that property and that perennial stream or
3 river are less than 50 feet from the outer perimeter of the land area onto
4 which waste is applied from a lagoon that is a component of a swine
5 farm in violation of G.S. 106-803.

6 (c) If the court determines it is appropriate, the court may award court costs,
7 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
8 temporary restraining order or preliminary injunction is sought, the court may require the
9 filing of a bond or equivalent security. The court shall determine the amount of the bond
10 or security.

11 (d) Nothing in this section shall restrict any other right that any person may have
12 under any statute or common law to seek injunctive or other relief.

13 **"§ 106-805. Written notice of swine farms.**

14 (a) Any person who intends to construct a swine farm whose animal waste
15 management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of
16 the General Statutes shall, after completing a site evaluation and before the farm site is
17 modified, attempt to notify all adjoining property owners and all property owners who
18 own property located across a public road, street, or highway from the swine farm of that
19 person's intent to construct the swine farm. This notice shall be by certified mail sent to
20 the address on record at the property tax office in the county in which the land is located.
21 The written notice shall include all of the following:

22 (1) The name and address of the person intending to construct a swine farm.

23 (2) The type of swine farm and the design capacity of the animal waste
24 management system.

25 (3) The name and address of the technical specialist preparing the waste
26 management plan.

27 (4) The address of the local Soil and Water Conservation District office.

28 (5) Information informing the adjoining property owners and the property
29 owners who own property located across a public road, street, or
30 highway from the swine farm that they may submit written comments to
31 the Division of Environmental Management, Department of
32 Environment, Health, and Natural Resources.

33 (b) As used in this section, 'site evaluation' is defined in G.S. 106-802."

34 (b) Subsection (a) of this section does not repeal any rules that do not conflict
35 with the provisions of that section.

36 Sec. 8. Section 2 of Chapter 420 of the 1995 Session Laws reads as rewritten:

37 "~~Sec. 2. This act becomes effective October 1, 1995, and applies to any new swine~~
38 farm for which a site evaluation is conducted on or after that date. This act applies to the
39 construction or enlargement, on or after October 1, 1995, of swine houses, lagoons, and
40 land areas onto which waste is applied from a lagoon that are components of a swine
41 farm. This act does not apply under each of the following circumstances:

42 (1) When the construction or enlargement occurs on or after October 1,
43 1995, for the purpose of increasing the swine population to that set forth

1 as the projected population in a registration of the swine operation filed
2 with the Department of Environment, Health, and Natural Resources
3 before October 1, 1995.

4 (2) When the construction or enlargement occurs on or after October 1,
5 1995, for the purpose of increasing the swine population to the
6 population that the animal waste management system is designed to
7 accommodate as that system is set forth in a registration of the swine
8 operation filed with the Department of Environment, Health, and
9 Natural Resources before October 1, 1995, or as that system is set forth
10 in an animal waste management plan approved before October 1, 1995.

11 (3) When the construction or enlargement occurs on or after October 1,
12 1995, for the purpose of complying with applicable animal waste
13 management rules and not for the purpose of increasing the swine
14 population."

15 Sec. 9. G.S. 143-215.74(b)(5) reads as rewritten:

16 "(5) Funding may be provided to assist practices including conservation
17 tillage, diversions, filter strips, field borders, critical area plantings,
18 sediment control structures, sod-based rotations, grassed waterways,
19 strip-cropping, terraces, cropland conversion to permanent vegetation,
20 grade control structures, water control structures, emergency spillways,
21 riparian buffers or equivalent controls, odor control best management
22 practices, insect control best management practices, and animal waste
23 managements-management systems and application. Funding for animal
24 waste management shall be allocated for practices in river basins such
25 that the funds will have the greatest impact in improving water quality."

26 Sec. 10. ♦G.S. 143-215.74(b)(6) reads as rewritten:

27 "(6) State funding shall be limited to seventy-five percent (75%) of the
28 average cost for each practice with the assisted farmer providing
29 twenty-five percent (25%) of the cost (which may include in-kind
30 support) with a maximum of ~~fifteen thousand dollars (\$15,000) per year~~
31 seventy-five thousand dollars (\$75,000) total to each applicant."

32 Sec. 11. (a) The Division of Soil and Water Conservation of the Department of
33 Environment, Health, and Natural Resources, the Cooperative Extension Service of North
34 Carolina State University, and the North Carolina Department of Agriculture shall
35 prepare a coordinated and comprehensive plan that includes how existing resources at the
36 local level can be utilized for nonpoint source pollution prevention and control. The plan
37 shall include mechanisms to be utilized that enhance communication, and provide
38 information, technical assistance, and environmental education. The plan shall also
39 include the following:

40 (1) Designate the Division of Soil and Water Conservation of the
41 Department of Environment, Health, and Natural Resources as the lead
42 agency with a defined line of authority for agricultural activities
43 affected by the nonpoint source pollution prevention/control plan.

1 (2) Identify the needs of agricultural crop and livestock operations and the
2 services provided by the various groups.

3 (3) Develop a strategic plan for interaction and communication with
4 farmers and livestock operations concerning implementation of
5 agricultural best management practices including nutrient management
6 plans and site-specific nutrient reduction efforts.

7 (b) The Commissioner of Agriculture, the Secretary of the Department of
8 Environment, Health, and Natural Resources, and the Director of the Cooperative
9 Extension Service shall report their comprehensive plan to the Senate Select Committee
10 on River Water Quality and Fish Kills and the Environmental Review Commission by
11 September 30, 1996.

12 Sec. 12. The Environmental Review Commission shall study the feasibility of
13 modifying the permit and operations review requirements for animal operations
14 established under this act. The Commission shall consider whether the requirements
15 should be extended to additional animal operations including confined poultry operations
16 with dry litter. The Commission shall report on its findings and recommendations to the
17 General Assembly on or before the first day of the 1997 Regular Session.

18 Sec. 13. (a) G.S. 143-215.10A, as enacted by Section 1 of this act, is effective
19 upon ratification.

20 (b) G.S. 143-215.10B, as enacted by Section 1 of this act, is effective upon
21 ratification.

22 (c) G.S. 143-215.10D, as enacted by Section 1 of this act, becomes effective
23 September 1, 1996.

24 (d) G.S. 143-215.10E, as enacted by Section 1 of this act, is effective upon
25 ratification.

26 (e) G.S. 143-215.10F, as enacted by Section 1 of this act, becomes effective
27 January 1, 1997.

28 (f) G.S. 143-215.10G, as enacted by Section 1 of this act, becomes effective
29 January 1, 1997.

30 (g) Section 2 of this act becomes effective January 1, 1997.

31 (h) Sections 3 and 4 of this act are effective upon ratification and apply to
32 violations that occur on or after that date.

33 (i) Section 5 of this act becomes effective October 1, 1996.

34 (j) Section 6 of this act is effective upon ratification, except that G.S 90A-
35 47.2(a), as enacted by subsection (b) of Section 4 of this act, becomes effective January
36 1, 1997.

37 (k) Section 7 of this act becomes effective October 1, 1996, provided that the
38 construction or enlargement of swine houses, lagoons, and land areas that meet the
39 requirements of subdivisions 1 through 3 of Section 8 of this act prior to October 1, 1996,
40 shall be controlled by Section 8 of this act.

41 (l) Part 9A of Article 21 of Chapter 143 of the General Statutes is repealed
42 effective January 1, 1997. A person certified under Part 9A of Article 21 of Chapter 143
43 of the General Statutes shall be certified as an animal waste management system operator

1 by the Water Pollution Control System Operators Certification Commission without
2 additional preexamination training, examination, or payment of an initial certification fee.
3 A person certified under Part 9A of Article 21 of Chapter 143 of the General Statutes
4 shall complete approved additional training and pay the annual renewal fee in order to
5 maintain certification.

6 Sec. 14. (a) G.S. 143-215.10C, as enacted by Section 1 of this act, becomes
7 effective January 1, 1997. In order to ensure an orderly and cost-effective phase-in of the
8 permit program, the Department of Environment, Health, and Natural Resources shall
9 issue permits for animal waste management facilities over a five-year period. The
10 Department shall issue permits for approximately twenty percent (20%) of the animal
11 waste management facilities that are in operation on January 1, 1997, during each of the
12 five calendar years beginning January 1, 1997, and shall give priority to those animal
13 waste management systems serving the largest animal operations. An animal waste
14 management system that is deemed permitted by rule on January 1, 1997, under 15A
15 N.C.A.C. 2H.0217 may continue to operate on a deemed permitted basis as provided in
16 subsection (b) of this section.

17 (b) In accordance with its phase-in schedule, the Department shall notify each
18 owner or operator of an animal waste management system that is deemed permitted of the
19 date by which an application for a permit for that animal waste management system shall
20 be submitted by certified mail. An owner or operator of an animal waste management
21 system who fails to submit an application for a permit by the date specified by the
22 Department shall not operate the animal waste management system after that date. An
23 animal waste management system that is authorized to continue operation under this
24 section and for which a timely application for a permit is submitted may continue to
25 operate on a deemed permitted basis until the Department either issues a permit or
26 notifies the owner or operator that the application for a permit is denied. An animal
27 waste management system that is deemed permitted shall be subject to the annual
28 operational review and annual inspection requirements as though it were permitted.

29 (c) The Department shall act on an application for a permit for a new facility or for
30 the expansion of an existing facility within 90 days after the Department receives the
31 application.

32 (d) G.S. 143-215.10C, as enacted by Section 1 of this act, constitutes a recent act
33 of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental
34 Management Commission may adopt temporary rules to implement the provisions of
35 G.S. 143-215.10C.

36 Sec. 15. (a) All operators of animal waste management systems, as defined in
37 G.S. 143-215.10B, as enacted by Section 1 of this act, shall register with their local Soil
38 and Water Conservation District office and initiate the process to obtain an approved
39 animal waste management plan pursuant to 15A N.C.A.C. 2H.0217. Operators who
40 initiate the process of obtaining an approved animal waste management plan before 1
41 September 1996 shall receive priority for inclusion in the Nonpoint Source Pollution
42 Control Program pursuant to G.S. 143-215.74 et seq., including priority for technical
43 assistance and State funding.

1 (b) The Environmental Management Commission may enter into a special
2 agreement with an operator who registers by 1 September 1996 under subsection (a) of
3 this section and who makes a good faith effort to obtain an approved animal waste
4 management plan by 31 December 1997. The special agreement shall set forth a
5 schedule for the operator to follow to obtain an approved animal waste management plan
6 by a date certain and shall provide that the Environmental Management Commission
7 shall not issue a notice of violation for failure to have an approved animal waste
8 management plan so long as the operator complies with the special agreement.

9 (c) The Environmental Management Commission shall strictly enforce the
10 penalties available against those operators who fail to comply with subsection (a) of this
11 section or otherwise fail to make a good faith effort to obtain an approved animal waste
12 management plan by 31 December 1997.

13 (d) The board of each Soil and Water Conservation District shall develop a
14 strategy to assist operators of animal waste management systems in its district to obtain
15 approved animal waste management plans by 31 December 1997.

16 Sec. 16. The Environmental Management Commission shall develop a
17 definition for the term "chronic rainfall". The Commission shall review the meaning of
18 "no discharge of pollutants" as used in the definition of "animal waste management
19 system" in its animal waste management rules to determine whether this phrase
20 constitutes a no discharge requirement and whether this phrase creates a performance
21 standard or a technology standard. The Commission shall clarify the meaning of "no
22 discharge" such that the no discharge requirement for animal waste management systems
23 is economically practical and technologically achievable. The Commission shall
24 complete the requirements of this section by 1 October 1996.

25 Sec. 17. No later than September 1, 1996, the Soil and Water Conservation
26 Commission shall specify odor control best management practices, insect control best
27 management practices, and best management practices for riparian buffers or equivalent
28 controls consistent with the provisions of G.S. 143-215.10C(e)(1), (2), and (4), as enacted
29 by Section 1 of this act.

30 Sec. 18. No later than October 1, 1996, the Environmental Management
31 Commission and the Soil and Water Conservation Commission, with technical assistance
32 from the Cooperative Extension Service, shall establish the record-keeping requirements
33 under G.S. 143-215.1C(e)(8), as enacted by Section 2 of this act. The Natural Resources
34 Conservation Service is encouraged to cooperate fully with establishing these
35 requirements.

36 Sec. 19. (a) An interagency group is created to:

- 37 (1) Address questions from technical specialists and provide uniform
38 interpretations to technical specialists regarding the requirements of the
39 animal waste management rules.
- 40 (2) Publish its decisions on these questions on a regular and recurring basis.
- 41 (3) Provide uniform strategies for operators of intensive livestock
42 operations to meet the December 31, 1997, deadline to obtain an
43 approved animal waste management plan.

1 (4) Develop, no later than August 1, 1996, a standard for the use of riparian
2 buffers or equivalent controls as best management practices, particularly
3 along perennial streams; decide whether a uniform State standard, a
4 uniform basinwide standard, or a site-specific standard best protects
5 water quality; and submit the standard that the group decides upon to
6 the Soil and Water Conservation Commission for adoption in
7 developing best management practices for riparian buffers and
8 equivalent controls under Section 6 of this act.

9 (b) The interagency group shall consist of two representatives from each of the
10 following State agencies: the Division of Soil and Water Conservation, Department of
11 Environment, Health, and Natural Resources; the Division of Environmental
12 Management, Department of Environment, Health, and Natural Resources; the
13 Department of Agriculture; and the Cooperative Extension Service. The General
14 Assembly encourages the Natural Resources Conservation Service, United States
15 Department of Agriculture, to provide two representatives from its agency to participate
16 fully as members of the interagency group. The interagency group shall remain in
17 existence until such time after December 31, 1997, that the Secretary of Environment,
18 Health, and Natural Resources determines the interagency group is no longer needed to
19 resolve issues related to certifying animal waste management plans.