

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1227*
Committee Substitute Favorable 6/6/96

Short Title: Animal Waste Comm. Recommendations.

(Public)

Sponsors:

Referred to:

May 17, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A COMPREHENSIVE REGULATORY PROGRAM FOR
3 THE SITING AND PERMITTING OF INTENSIVE ANIMAL AGRICULTURE
4 OPERATIONS AND THE TRAINING AND CERTIFICATION OF PERSONS
5 OPERATING ANIMAL WASTE MANAGEMENT SYSTEMS.

6 The General Assembly of North Carolina enacts:

7 **PART I. PERMITS/INSPECTIONS/FEEES FOR ANIMAL WASTE**
8 **MANAGEMENT SYSTEMS.**

9 Section 1. G.S. 143-215.1(a) reads as rewritten:

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

- 15 (1) Make any outlets into the waters of the ~~State;~~ State.
- 16 (2) Construct or operate any sewer system, treatment works, or disposal
17 system within the ~~State;~~ State.

- 1 (3) Alter, extend, or change the construction or method of operation of any
2 sewer system, treatment works, or disposal system within the ~~State;~~
3 State.
- 4 (4) Increase the quantity of waste discharged through any outlet or
5 processed in any treatment works or disposal system to any extent ~~which~~
6 that would result in any violation of the effluent standards or limitations
7 established for any point source or ~~which-that~~ that would adversely affect the
8 condition of the receiving waters to the extent of violating any ~~of the~~
9 ~~standards applicable to such water;~~ applicable standards.
- 10 (5) Change the nature of the waste discharged through any disposal system
11 in any way ~~which-that~~ that would exceed the effluent standards or limitations
12 established for any point source or ~~which-that~~ that would adversely affect the
13 condition of the receiving waters in relation to any ~~of the standards~~
14 ~~applicable to such waters;~~ applicable standards.
- 15 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
16 in any manner intermixed with the waters of the State in violation of the
17 water quality standards applicable to the assigned classifications or in
18 violation of any effluent standards or limitations established for any
19 point source, unless allowed as a condition of any permit, special order
20 or other appropriate instrument issued or entered into by the
21 Commission under the provisions of this ~~Article;~~ Article.
- 22 (7) Cause or permit any wastes for which pretreatment is required by
23 pretreatment standards to be discharged, directly or indirectly, from a
24 pretreatment facility to any disposal system or to alter, extend or change
25 the construction or method of operation or increase the quantity or
26 change the nature of the waste discharged from or processed in ~~such~~
27 ~~facility;~~ that facility.
- 28 (8) Enter into a contract for the construction and installation of any outlet,
29 sewer system, treatment works, pretreatment facility or disposal system
30 or for the alteration or extension of any such ~~facilities;~~ facilities.
- 31 (9) Dispose of sludge resulting from the operation of a treatment works,
32 including the removal of in-place sewage sludge from one location and
33 its deposit at another location, consistent with the requirement of the
34 Resource Conservation and Recovery Act and regulations promulgated
35 pursuant ~~thereto;~~ thereto.
- 36 (10) Cause or permit any pollutant to enter into a defined managed area of
37 the State's waters for the maintenance or production of harvestable
38 freshwater, estuarine, or marine plants or ~~animals;~~ animals.
- 39 (11) Cause or permit discharges regulated under G.S. 143-214.7 ~~which-that~~
40 result in water pollution.
- 41 (12) Subject to the provisions of G.S. 143-215.1B, construct or operate an
42 animal waste management system.

1 In the event that both effluent standards or limitations and classifications and water
2 quality standards are applicable to any point source or sources and to the waters to which
3 they discharge, the more stringent among the standards established by the Commission
4 shall be applicable and controlling.

5 In connection with the above, no such permit shall be granted for the disposal of
6 waste in waters classified as sources of public water supply where the head of the agency
7 which administers the public water supply program pursuant to Article 10 of Chapter
8 130A of the General Statutes, after review of the plans and specifications for the
9 proposed disposal facility, determines and advises the Commission that such disposal is
10 sufficiently close to the intake works or proposed intake works of a public water supply
11 as to have an adverse effect on the public health.

12 In any case where the Commission denies a permit, it shall state in writing the reason
13 for such denial and shall also state the Commission's estimate of the changes in the
14 applicant's proposed activities or plans which will be required in order that the applicant
15 may obtain a permit."

16 Sec. 2. (a) Part 1 of Article 21 of Chapter 143 of the General Statutes is
17 amended by adding two new sections to read:

18 **"§ 143-215.1B. Animal waste management systems; permit requirements.**

19 (a) The Commission shall develop a system of permits for animal waste
20 management systems as defined by this section. The permit system shall consist of one
21 general permit for each animal species; swine, poultry, horses, sheep, and cattle. The
22 Commission may require an individual permit for an animal waste management system in
23 substantial violation of the conditions of its general permit.

24 (b) No person shall construct or operate an animal waste management system that
25 satisfies any one of the following unless that person has applied for and obtained a permit
26 from the Department:

27 (1) The system is designed for or actually serves at least 100 head of cattle.

28 (2) The system is designed for or actually serves at least 75 horses.

29 (3) The system is designed for or actually serves at least 250 swine.

30 (4) The system is designed for or actually serves at least 1,000 sheep.

31 (5) The system is designed for or actually serves at least 30,000 birds with a
32 liquid animal waste management system.

33 (c) The Department shall not issue a permit for an animal waste management
34 system under subsection (b) of this section unless the applicant has obtained an animal
35 waste management plan that a technical specialist has certified meets the applicable
36 minimum standards and specifications.

37 (d) Animal waste management plans shall include all of the following
38 components:

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

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

- 1 (3) Provisions that set forth acceptable methods of disposing of mortalities.
2 (4) Provisions regarding best management practices for riparian buffers or
3 equivalent controls, particularly along perennial streams.
4 (5) Provisions regarding the use of emergency spillways and site-specific
5 emergency management plans that set forth operating procedures to
6 follow during emergencies in order to minimize the risk of
7 environmental damage.
8 (6) Provisions regarding periodic testing of waste products used as nutrient
9 sources as close to the time of application as practical and at least within
10 60 days of the date of application and periodic testing, at least annually,
11 of soils at crop sites where the waste products are applied. Nitrogen
12 shall be the rate-determining element. Zinc and copper levels in the
13 soils shall be monitored, and alternative crop sites shall be used when
14 these metals approach excess levels.
15 (7) Provisions regarding waste utilization plans that assure a balance
16 between nitrogen application rates and nitrogen crop requirements, that
17 assure that lime is applied to maintain pH in the optimum range for crop
18 production, and that include corrective action, including revisions to the
19 waste utilization plan based on data of crop yields and crop analysis,
20 that will be taken if this balance is not achieved as determined by testing
21 conducted pursuant to subdivision (6) of this subsection.
22 (8) Provisions regarding the completion and maintenance of records on
23 forms developed by the Department, which records shall include
24 information addressed in subdivisions (6) and (7) of this subsection,
25 including the dates and rates that waste products are applied to soils at
26 crop sites, and shall be made available upon request by the Department.

27 (e) Except as provided in subsection (f) of this section, animal waste management
28 systems that are designed for and actually serve less than the numbers of animals listed in
29 subdivisions (1) through (4) of subsection (b) of this section and all other animal waste
30 management systems shall be deemed permitted and are not required to have an animal
31 waste management plan.

32 (f) Dry litter animal waste management systems that are designed or actually
33 serve at least 30,000 birds shall be deemed permitted. No later than December 31, 1999,
34 any operator of this type of system shall develop an animal waste management plan that
35 complies with record-keeping requirements under subdivision (8) of subsection (d) of this
36 section. Any operator of this type of system shall retain records required under this
37 section and by the Department on-site for three years.

38 (g) The Department may enforce the animal waste management plan under
39 subsection (c) of this section in the same manner as it enforces a condition of a permit.
40 The Department shall permanently revoke the permit for any animal waste management
41 system owned by a person who is assessed three penalties within a three-year period for a
42 willful discharge of animal waste. The operation shall cease operation pending appeal of
43 these assessments.

1 (h) Animal waste management systems designed to serve or actually serving at
2 least 100 head of cattle, 75 horses, 250 swine, or 30,000 birds with a liquid animal waste
3 management system shall have an operations review on an annual basis by technical
4 specialists of any of the following agencies: (i) North Carolina Soil and Water
5 Conservation Districts or federal Natural Resources Conservation Service; (ii)
6 Cooperative Extension Service; or (iii) North Carolina Department of Agriculture.
7 During the operations review, if a technical specialist observes any of the following
8 major violations, the technical specialist shall immediately notify the Division of
9 Environmental Management for immediate action:

- 10 (1) Use of a straight pipe discharging animal waste directly into a water
11 body;
12 (2) Any major deterioration or leaks in a lagoon system;
13 (3) Overspraying animal waste where runoff is visibly entering a blue-line
14 stream as identified on a U.S.G.S. map; or
15 (4) Any discharge that visibly bypasses a lagoon system.

16 If a technical specialist observes any other violation that does not pose an immediate
17 threat to the environment, the animal operation shall be given oral advice on corrective
18 action needed, including technical assistance if requested. The animal operation shall be
19 reinspected no later than 30 days following the original operations review to verify that
20 the animal operation is in compliance with all permit requirements. If, upon reinspection,
21 the operation has not made a good faith effort to comply with permit requirements, the
22 technical specialist shall issue a written report of corrective actions required to the
23 operator, with a copy filed in the District Soil and Water Conservation Office. The
24 animal operation shall be reinspected no later than 30 days after the written report has
25 been issued, and the technical specialist shall verify that the animal operation is in
26 compliance with all permit requirements. If the animal operation is not in compliance,
27 the technical specialist shall report the noncompliance, including recommended
28 corrective action to the Division of Environmental Management within five days.

29 (i) As used in this section:

- 30 (1) 'Animal waste' means livestock or poultry excreta or a mixture of
31 excreta with feed, bedding, litter, or other materials.
32 (2) 'Animal waste management system' means a combination of structural
33 and nonstructural practices serving a feedlot that provide for the proper
34 collection, treatment, storage, or application of animal waste to the land
35 such that no discharge of pollutants occurs to surface waters of the State
36 by any means except as a result of chronic rainfall or a storm event
37 more severe than the 25-year, 24-hour storm.
38 (3) 'Deemed permitted' means that a facility is considered as having a
39 permit under this section and being in compliance with the permitting
40 requirements of G.S. 143-215.1(a) even though it has not received a
41 general or an individual permit for its construction or operation.
42 (4) 'Feedlot' means a lot or building or combination of lots and buildings
43 intended for the confined feeding, breeding, raising, or holding of

1 animals and specifically designed as a confinement area in which
2 animal waste may accumulate or where the concentration of animals is
3 such that an established vegetative cover cannot be maintained. The
4 confinement period must be for at least 45 days out of a 12-month
5 period and not necessarily consecutive days. Pastures shall not be
6 considered feedlots for the purposes of this section.

7 (5) 'Technical specialist' means an individual designated by the Soil and
8 Water Conservation Commission, pursuant to rules adopted by that
9 Commission, to certify animal waste management plans.

10 **"§ 143-215.1C. Written notice of swine farms.**

11 (a) Any person who intends to construct a swine farm whose animal waste
12 management system is subject to a permit under G.S. 143-215.1B(a) shall, after
13 completing a site evaluation and before the farm site is modified, attempt to notify all
14 adjoining property owners and all property owners who own property located across a
15 public road, street, or highway from the swine farm of that person's intent to construct the
16 swine farm. This notice shall be by certified mail sent to the address on record at the
17 property tax office in the county in which the land is located. The written notice shall
18 include all of the following:

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

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

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

24 (4) The address of the local Soil and Water Conservation District Office.

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

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

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

33 Sec. 3. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended
34 by adding a new section to read:

35 **"§ 143-215.3D. Fees for animal waste management systems.**

36 (a) The Department shall have the authority to impose fees for the costs of
37 permitting and conducting annual operations reviews of animal waste management
38 systems as follows:

39 (1) For each animal waste management system with a design capacity of at
40 least 38,500 pounds steady state live weight and less than 100,000
41 pounds steady state live weight, an annual fee not to exceed fifty dollars
42 (\$50.00).

1 (2) For each animal waste management system with a design capacity of at
2 least 100,000 pounds steady state live weight and less than 800,000
3 pounds steady state live weight, an annual fee not to exceed one
4 hundred dollars (\$100.00).

5 (3) For each animal waste management system with a design capacity of
6 greater than or equal to 800,000 pounds steady state live weight, an
7 annual fee not to exceed two hundred dollars (\$200.00).

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

11 **PART II. DUTIES OF STATE AGENCIES.**

12 Sec. 4. (a) The Environmental Management Commission shall design and, no
13 later than October 1, 1996, begin to implement a system of general permits for animal
14 waste management systems, as defined in G.S. 143-215.1B, as enacted by Section 2 of
15 this act. This system of permits shall be consistent with the provisions of Section 2 of
16 this act. This system of permits shall provide for the issuance of one type of general
17 permit for each type of species: swine, poultry, horses, sheep, and cattle. Individual
18 permits may be required for those animal waste management systems found to be in
19 substantial violation of the conditions of their general permit.

20 (b) The Department of Environment, Health, and Natural Resources shall develop
21 a systematic monitoring and inspection program for animal waste management systems
22 consistent with the provisions of G.S. 143-215.1B(h) as enacted by Section 2 of this act.

23 (c) By no later than January 1, 1997, the Department of Environment, Health, and
24 Natural Resources will evaluate the animal waste permitting, inspection, and enforcement
25 program established pursuant to subsections (a) and (b) of this section and make a
26 recommendation to the 1997 Session of the General Assembly on the following options:

27 (1) Whether to maintain the approach outlined in subsections (a) and (b) of
28 this section.

29 (2) Whether to transfer frontline responsibility for conducting annual
30 compliance inspections to the Division of Soil and Water Conservation;
31 under this option the Division of Environmental Management would
32 only conduct follow-up inspections after being notified of a potential
33 problem. The Division of Environmental Management would retain
34 permitting and enforcement responsibilities.

35 (3) Whether to transfer all animal waste permitting, inspection, and
36 enforcement duties to the Division of Soil and Water Conservation,
37 thereby establishing a single agency within the Department of
38 Environment, Health, and Natural Resources to oversee animal waste
39 systems.

40 Sec. 5. No later than October 1, 1996, the Environmental Management
41 Commission shall implement the provisions of G.S. 143-215.1B(d)(1) through (8), as
42 enacted by Section 2 of this act and define the term "chronic rainfall" as used in G.S. 143-
43 215.1B(h)(2), as enacted by Section 2 of this act. No later than October 1, 1996, the

1 Environmental Management Commission shall review the meaning of "no discharge of
2 pollutants" as used in G.S. 143-215.1B(h)(2), as enacted by Section 2 of this act;
3 determine whether this no discharge requirement is a performance standard or a
4 technology standard; and clarify the meaning of "no discharge" such that the no discharge
5 requirement for animal waste management systems is economically practical and
6 technologically achievable.

7 Sec. 6. No later than September 1, 1996, the Soil and Water Conservation
8 Commission shall specify odor control best management practices, insect control best
9 management practices, and best management practices for riparian buffers or equivalent
10 controls consistent with the provisions of G.S. 143-215.1B(d)(1), (2), and (4), as enacted
11 by Section 2 of this act.

12 Sec. 7. No later than October 1, 1996, the Environmental Management
13 Commission and the Soil and Water Conservation Commission, with technical assistance
14 from the Cooperative Extension Service, shall establish the record-keeping requirements
15 under G.S. 143-215.1B(d)(8), as enacted by Section 2 of this act. The Natural Resources
16 Conservation Service is encouraged to cooperate fully with establishing these
17 requirements.

18 Sec. 8. (a) A technical advisory group is created to provide advice and
19 assistance to the Environmental Management Commission and the Soil and Water
20 Conservation Commission and to:

- 21 (1) Address questions from technical specialists and provide uniform
22 interpretations to technical specialists regarding the requirements of the
23 animal waste management rules.
 - 24 (2) Publish its decisions on these questions on a regular and recurring basis.
 - 25 (3) Provide uniform strategies for operators of animal waste management
26 systems to meet the December 31, 1997, deadline to obtain an approved
27 animal waste management plan.
 - 28 (4) Develop, no later than August 1, 1996, a standard for the use of riparian
29 buffers or equivalent controls as best management practices, particularly
30 along perennial streams; decide whether a uniform State standard, a
31 uniform basinwide standard, or a site-specific standard best protects
32 water quality; and submit the standard that the group decides upon to
33 the Soil and Water Conservation Commission for adoption in
34 developing best management practices for riparian buffers and
35 equivalent controls under Section 6 of this act.
- 36 (b) The technical advisory group shall consist of:
- 37 (1) Two representatives from the Division of Soil and Water Conservation
38 and the Division of Environmental Management to be appointed by the
39 Secretary of the Department of Environment, Health, and Natural
40 Resources;
 - 41 (2) Two representative from the Department of Agriculture to be appointed
42 by the Commissioner of Agriculture;

- 1 (3) Two representatives from the Cooperative Extension Service to be
2 appointed by the Director of the Cooperative Extension Service; and
3 (4) One representative each from the swine, poultry, and dairy industries to
4 be appointed by the Commissioner of Agriculture.

5 The General Assembly encourages the Natural Resources Conservation Service, United
6 States Department of Agriculture, to provide two representatives from its agency to
7 participate fully as members of the technical advisory group. The technical advisory
8 group shall remain in existence until such time after December 31, 1997, that the
9 Secretary of Environment, Health, and Natural Resources determines the interagency
10 group is no longer needed to resolve issues related to certifying animal waste
11 management plans.

12 PART III. ADDITIONAL ENFORCEMENT PROVISIONS.

13 Sec. 9. (a) G.S. 143-215.2(a) reads as rewritten:

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

32 (b) Nothing in G.S. 143-215.2(a) shall be construed as affecting the provisions of
33 Article 57 of Chapter 106 of the General Statutes.

34 Sec. 10. G.S. 143-215(e) reads as rewritten:

35 "(e) Except as required by federal law or regulations, the Commission may not
36 adopt effluent standards or limitations applicable to animal and poultry feeding
37 operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other
38 conveyances have been constructed for the purpose of willfully discharging pollutants to
39 the waters of the State, the Secretary shall have the authority to assess fines and penalties
40 not to exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) for the first
41 offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July
42 1, 1990 Edition) shall apply to this subsection."

43 PART IV. TRAINING REQUIREMENTS FOR THE LAND

APPLICATION OF WASTE.

1
2 Sec. 11. Part 9A of Article 21 of Chapter 143 of the General Statutes is
3 repealed.

4 Sec. 12. G.S. 143B-301(a) reads as rewritten:

5 "(a) The Water Pollution Control System Operators Certification Commission shall
6 consist of 11 members. Two members shall be from the animal agriculture industry and
7 shall be appointed by the Commissioner of Agriculture. ~~nine~~ Nine members shall be
8 appointed by the Secretary of Environment, Health, and Natural Resources with the
9 approval of the Environmental Management Commission with the following
10 qualifications:

- 11 (1) Two members shall be currently employed as water pollution control
12 facility operators, water pollution control system superintendents or
13 directors, water and sewer superintendents or directors, or equivalent
14 positions with a North Carolina municipality;
- 15 (2) One member shall be manager of a North Carolina municipality having
16 a population of more than 10,000 as of the most recent federal census;
- 17 (3) One member shall be manager of a North Carolina municipality having
18 a population of less than 10,000 as of the most recent federal census;
- 19 (4) One member shall be employed by a private industry and shall be
20 responsible for supervising the treatment or pretreatment of industrial
21 wastewater;
- 22 (5) One member who is a faculty member of a four-year college or
23 university and whose major field is related to wastewater treatment;
- 24 (6) One member who is employed by the Department of Environment,
25 Health, and Natural Resources and works in the field of water pollution
26 control, who shall serve as Chairman of the Commission;
- 27 (7) One member who is employed by a commercial water pollution control
28 system operating firm; and
- 29 (8) One member shall be currently employed as a water pollution control
30 system collection operator, superintendent, director, or equivalent
31 position with a North Carolina municipality."

32 Sec. 13. Existing Article 3 of Chapter 90A of the General Statutes shall be
33 designated Part 1 of that Article, to be entitled "Certification of Water Pollution Control
34 System Operators", and is amended by adding a new Part 2 to read:

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

36 "**§ 90A-47. Purpose.**

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

43 "**§ 90A-47.1. Definitions.**

1 As used in this Part:

- 2 (1) 'Animal waste' means liquid residuals resulting from the raising of
3 swine that are collected, treated, stored, or applied to the land through
4 an animal waste management system.
- 5 (2) 'Animal waste management system' is defined in G.S. 143-215.1B.
- 6 (3) 'Application' means laying, spreading on, irrigating, or injecting animal
7 waste onto land.
- 8 (4) 'Owner' means the person who owns or controls the land used for
9 agricultural purposes or the person's lessee or designee.
- 10 (5) 'Operator in charge' means a person who holds a currently valid
11 certificate to operate an animal waste management system and who has
12 primary responsibility for the operation of the system.
- 13 (6) 'Swine production facility' means a facility for the housing and raising
14 of swine designed to serve, and actually serving, more than 250 swine.

15 **"§ 90A-47.2. Certified operator required; qualifications for certification.**

16 (a) After December 31, 1997, no owner or other person in control of a swine
17 production facility having an animal waste management system shall allow the system to
18 be operated by a person who does not hold a valid certificate as an animal waste
19 management system operator issued by the Commission. After December 31, 1997, no
20 person shall perform the duties of an animal waste management system operator without
21 being certified under the provisions of this Part. Certifications that were issued for
22 animal waste management system operators under Part 9A of Article 21 of Chapter 143
23 of the General Statutes shall, subject to the provisions of this Part, continue in full force
24 and effect.

25 (b) The owner or other person in control of a swine production facility may
26 contract with a certified animal waste management system operator to provide for the
27 operation of the animal waste management system at that facility. The Commission may
28 adopt rules requiring that any certified animal waste management system operator
29 contracting with one or more owners or other persons in control of a swine production
30 facility file an annual report with the Commission as to the operations of each system at
31 which the operator's services are provided.

32 **"§ 90A-47.3. Qualifications for certification; training; examination.**

33 (a) The Commission, in cooperation with the Division of Environmental
34 Management, Department of Environment, Health, and Natural Resources, and the
35 Cooperative Extension Service, shall develop and administer a program of training for
36 animal waste management system operators. The educational program shall not exceed
37 12 hours of instruction. Training materials shall be user-friendly and shall take into
38 account the educational level of the applicants.

39 (b) The Commission shall develop procedures for the receipt of applications for
40 certification and investigation of the qualifications of applicants. The Commission shall
41 develop the examination for certification and make provisions for alternate testing
42 methods for persons with reading or learning difficulties.

1 (c) The examination shall be conducted by the Cooperative Extension Service.
2 Alternate testing methods developed by the Commission shall be used by the Cooperative
3 Extension Service upon the written request of the examinee. The Cooperative Extension
4 Service shall promptly forward the completed examinations to the Commission for
5 scoring. The Commission shall notify the examinees of their test scores within 10 days
6 of their receipt from the Cooperative Extension Service.

7 (d) The Commission shall issue a certificate as an operator in charge for each
8 person who completes the training program established in subsection (a) of this section,
9 demonstrates the operator's competence in the operation of animal waste management
10 systems by passing an appropriate exam, and pays the required fee.

11 **"§ 90A-47.4. Fees; certificate renewals.**

12 (a) An applicant for certification under this Part shall pay a fee of ten dollars
13 (\$10.00) for the examination and the certificate.

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

18 **"§ 90A-47.5. Suspension; revocation of certificate.**

19 The Commission, in accordance with the provisions of Chapter 150B of the General
20 Statutes, may suspend or revoke the certificate of any operator found to:

21 (1) Have practiced fraud or deception in obtaining certification;

22 (2) Have failed to exercise reasonable care, judgement, or the application of
23 the operator's knowledge and ability in the performance of the duties of
24 an operator in charge; or

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

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

30 **"§ 90A-47.6. Rules.**

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

32 Sec. 14. The title of Article 3 of Chapter 90A of the General Statutes reads as
33 rewritten:

34 "~~Certification of Water Pollution Control System Operators. Certifications Issued by the~~
35 Water Pollution Control System Operators Certification Commission."

36 **PART V. CLARIFICATION OF THE SWINE FARM SITING ACT.**

37 Sec. 15. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

38 **"ARTICLE 67.**

39 **"SWINE FARMS.**

40 **"§ 106-800. Title.**

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

42 **"§ 106-801. Purpose.**

1 The General Assembly finds that certain limitations on the siting of swine houses and
2 lagoons for larger swine farms can assist in the development of pork production to
3 contribute production, which contributes to the economic development of the State while
4 minimizing any State, by lessening the interference with the use and enjoyment of
5 adjoining property.

6 **"§ 106-802. Definitions.**

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

- 8 (1) 'Lagoon' means a confined body of water to hold animal byproducts
9 including bodily waste from animals or a mixture of waste with feed,
10 bedding, litter or other agricultural materials ~~without discharge to surface~~
11 ~~waters of the State except in the event of a storm more severe than the 25-~~
12 ~~year, 24-hour storm.~~ materials.
13 (2) ~~'New swine farm' means any swine farm whose operations were sited on~~
14 ~~or after October 1, 1995. Renovation and reconstruction of existing~~
15 ~~farms does not constitute a 'new swine farm'.~~
16 (3) 'Occupied residence' means a dwelling actually inhabited by a person on
17 a continuous basis as exemplified by a person living in his or her home.
18 (4) ~~'Siting' or 'site'~~ 'Site evaluation' means an investigation to determine if a
19 site meets all federal and State standards as evidenced by the Waste
20 Management Facility Site Evaluation Report on file with the ~~Natural~~
21 ~~Resources Conservation Service~~ Soil and Water Conservation District
22 office or a comparable report certified by a professional engineer or a
23 comparable report certified by a technical specialist approved by the
24 North Carolina Soil and Water Conservation ~~Commission~~ and either of
25 which report provides the basis for certification by the ~~Division of~~
26 ~~Environmental Management pursuant to the rules appearing in the North~~
27 ~~Carolina Administrative Code governing waste not discharged to surface~~
28 ~~waters.~~ Commission.
29 (5) 'Swine farm' means a tract of land devoted to raising 250 or more
30 animals of the porcine species.
31 (6) 'Swine house' means a building that shelters porcine animals on a
32 continuous basis.

33 **"§ 106-803. Requirements Siting requirements for siting swine houses and lagoons.**
34 **houses, lagoons, and land areas onto which waste is applied at swine**
35 **farms.**

36 (a) A swine house or a lagoon that is a component of a swine farm shall be located
37 at least 1,500 feet from any occupied residence; at least 2,500 feet from any school,
38 hospital, or church; and at least 100 feet from any property boundary. The outer perimeter
39 of the land area onto which waste is applied from a lagoon that is a component of a swine
40 farm shall be at least 50 feet from any ~~residential property boundary~~ boundary of property
41 on which an occupied residence is located and from any perennial stream or river, other
42 than an irrigation ditch or canal.

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

5 **"§ 106-804. Enforcement.**

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

- 10 (1) Injunctive relief.
11 (2) An order enforcing the siting requirements under G.S. 106-803.
12 (3) Damages caused by the violation.

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

- 15 (1) An occupied residence located less than 1,500 feet from a swine house
16 or lagoon in violation of G.S. 106-803.
17 (2) A school, hospital, or church located less than 2,500 feet from a swine
18 house or lagoon in violation of G.S. 106-803.
19 (3) Property whose boundary is located less than 100 feet from a swine
20 house or lagoon in violation of G.S. 106-803.
21 (4) Property on which an occupied residence is located and whose boundary
22 is less than 50 feet from the outer perimeter of the land area onto which
23 waste is applied from a lagoon that is a component of a swine farm in
24 violation of G.S. 106-803.
25 (5) Property that abuts a perennial stream or river, or on which a perennial
26 stream or river is located, and that property and that perennial stream or
27 river are less than 50 feet from the outer perimeter of the land area onto
28 which waste is applied from a lagoon that is a component of a swine
29 farm in violation of G.S. 106-803.

30 (c) If the court determines it is appropriate, the court may award court costs,
31 including reasonable attorneys' fees and expert witness' fees, to any party. If a temporary
32 restraining order or preliminary injunction is sought, the court may require the filing of a
33 bond or equivalent security. The court shall determine the amount of the bond or
34 security.

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

37 Sec. 16. Section 2 of Chapter 420 of the 1995 Session Laws reads as rewritten:
38 "Sec. 2. This act becomes effective October 1, 1995, and ~~applies to any new swine farm~~
39 ~~for which a site evaluation is conducted on or after that date.~~ 1995. This act applies to the
40 construction or enlargement, on or after October 1, 1995, of swine houses, lagoons, and
41 land areas onto which waste is applied from a lagoon that are components of a swine
42 farm. This act does not apply under each of the following circumstances:

- 1 (1) When the construction or enlargement occurs on or after October 1,
2 1995, for the purpose of increasing the swine population to that set forth
3 as the projected population in a registration of the swine operation filed
4 with the Department of Environment, Health, and Natural Resources
5 before October 1, 1995.
- 6 (2) When the construction or enlargement occurs on or after October 1,
7 1995, for the purpose of increasing the swine population to the
8 population that the animal waste management system is designed to
9 accommodate as that system is set forth in a registration of the swine
10 operation filed with the Department of Environment, Health, and
11 Natural Resources before October 1, 1995, or as that system is set forth
12 in an animal waste management plan approved before October 1, 1995.
- 13 (3) When the construction or enlargement occurs on or after October 1,
14 1995, for the purpose of complying with applicable animal waste
15 management rules and not for the purpose of increasing the swine
16 population."

17 Sec. 17. It is the intent of the General Assembly that Sections 15 and 16 of this
18 act, other than new G.S. 106-804, as enacted in Section 15 of this act, clarify ambiguous
19 language in the Swine Farm Siting Act, as enacted by Chapter 420 of the 1995 Session
20 Laws, and do not change the intent of that act.

21 **PART VI. MISCELLANEOUS PROVISIONS.**

22 Sec. 18. G.S. 143-215.74(b)(5) reads as rewritten:

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

33 Sec. 19. ♦G.S. 143-215.74(b)(6) reads as rewritten:

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

39 Sec. 20. (a) By September 1, 1996, all operators of animal waste management
40 systems, as defined in G.S. 143-215.1B(h), as enacted by Section 2 of this act, shall
41 contact their local Soil and Water Conservation District office and initiate the process to
42 obtain an approved animal waste management plan pursuant to 15A N.C.A.C. 2H.0217.
43 Operators who meet this September 1, 1996, deadline shall be placed on a list to receive

1 high priority for technical assistance. Operators who do not meet this deadline are not
2 assured of receiving technical assistance before December 31, 1997.

3 (b) The Environmental Management Commission may enter into special
4 agreements or contracts with operators who register by the September 1, 1996, deadline
5 under subsection (a) of this section and make a good faith effort to obtain an approved
6 animal waste management plan by December 31, 1997. The Environmental Management
7 Commission shall not issue a notice of violation of 15A N.C.A.C. 2H.0217 to these
8 operators. The special agreement or contract shall set forth a schedule for an operator to
9 follow to obtain an approved animal waste management plan.

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

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

17 Sec. 21. The Division of Environmental Management, Department of
18 Environment, Health, and Natural Resources, shall, as a matter of State policy, encourage
19 the development of alternative animal waste treatment and disposal technologies, shall
20 provide incentives to operators of animal waste management systems to participate in the
21 evaluation of new and innovative waste management technologies, and shall ensure that
22 the regulatory process does not limit the use of innovative technologies and that the
23 evaluation of these technologies is made in a timely manner.

24 Sec. 22. The Legislative Research Commission may study the provision of tax
25 credits against income taxes for the installation of innovative technology to control odors
26 from livestock operations and the installation of innovative, alternative animal waste
27 management systems to enhance water quality protection.

28 **PART VII. EFFECTIVE DATES.**

29 Sec. 23. (a) Section 1 of this act becomes effective January 1, 1998.

30 (b) G.S. 143-215.1B(i), as enacted by Section 2 of this act, is effective upon
31 ratification. G.S. 143-215.1B(d)(1), (2), (3), (6), (7), and (8), as enacted by Section 2 of
32 this act, become effective September 1, 1996, and apply to all animal waste management
33 systems for which an approved animal waste management plan is obtained on or after
34 that date and apply to all other animal waste management systems as of January 1, 1998.
35 G.S. 143-215.1B(d)(4) and (5), as enacted by Section 2 of this act, become effective
36 September 1, 1996, and apply to all animal waste management systems that are
37 constructed or expanded beyond their design capacity on or after that date. G.S. 143-
38 215.1B(f), as enacted by Section 2 of this act, becomes effective December 31, 1997,
39 except the record-keeping requirements of the last sentence of that subsection become
40 effective October 1, 1996. G.S. 143-215.1B(h) and G.S. 143-215.1C, as enacted by
41 Section 2 of this act, and Section 3 of this act become effective October 1, 1996, and G.S.
42 143-215.1C applies to any new swine farm constructed on or after that date and to any
43 existing swine farm that expands its animal waste management system beyond design

- 1 capacity on or after that date. The remainder of Section 2 of this act becomes effective
2 January 1, 1998, and applies to all animal waste management systems.
- 3 (c) Section 18 of this act becomes effective July 1, 1996. The remaining sections
4 of this act are effective upon ratification. Sections 9 and 10 of this act become effective
5 October 1, 1996, and apply to violations that occur on or after that date.