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Short Title: Phosphorus Nutrient Mgt./Animal Feedlots.

(Public)

Sponsors:

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April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT REQUIREMENTS APPLICABLE TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND ANIMAL WASTE MANAGEMENT PLANS GOVERNING ANIMAL FEEDING OPERATIONS TO MAKE THE STATE PERMIT REQUIREMENTS CONSISTENT WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10B reads as rewritten:

"§ 143-215.10B. Definitions.

As used in this Part:

- (1) "Animal operation" means any agricultural ~~farming-feedlot~~ activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management ~~system~~.system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.
- (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.
- (3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

1 (4) "Division" means the Division of Water Quality of the Department.

2 (5) "Feedlot" means a lot or building or combination of lots and buildings
3 intended for the confined feeding, breeding, raising, or holding of
4 animals and either specifically designed as a confinement area in
5 which animal waste may accumulate or where the concentration of
6 animals is such that an established vegetative cover cannot be
7 maintained. A building or lot is not a feedlot unless animals are
8 confined for 45 or more days, which may or may not be consecutive,
9 in a 12-month period. Pastures shall not be considered feedlots for
10 purposes of this Part.

11 (6) "Technical specialist" means an individual designated by the Soil and
12 Water Conservation Commission, pursuant to rules adopted by that
13 Commission, to certify animal waste management plans."

14 **SECTION 2.** G.S. 143-215.10C reads as rewritten:

15 **"§ 143-215.10C. Applications and permits.**

16 (a) No person shall construct or operate an animal waste management system for
17 an animal operation or operate an animal waste management system for a dry litter
18 poultry facility that is subject to regulation under 40 Code of Federal Regulations §
19 122.23 (1 July 2003) without first obtaining an individual permit or a general permit
20 under this Article. The Commission shall develop a system of individual and general
21 permits for animal operations and dry litter poultry facilities based on species, number
22 of animals, and other relevant factors. It is the intent of the General Assembly that most
23 animal waste management systems be permitted under a general permit. The
24 Commission, in its discretion, may require that an animal waste management system be
25 permitted under an individual permit if the Commission determines that an individual
26 permit is necessary to protect water quality, public health, or the environment. The
27 owner or operator of an animal operation shall submit an application for a permit at
28 least 180 days prior to construction of a new animal waste management system or
29 expansion of an existing animal waste management system and shall obtain the permit
30 prior to commencement of the construction or expansion. The owner or operator of a
31 dry litter poultry facility that is subject to regulation under 40 Code of Federal
32 Regulations § 122.23 (1 July 2003) shall submit an application for a permit at least 180
33 days prior to operation of a new animal waste management system.

34 (a1) An owner or operator of an animal waste management system for an animal
35 operation or a dry litter poultry facility that is subject to regulation under 40 Code of
36 Federal Regulations § 122.23(c)(3) (1 July 2003) shall apply for an individual permit or
37 a general permit under this Article within 90 days of notification by the Department that
38 the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3)
39 (1 July 2003).

40 (b) An animal waste management system shall be designed, constructed, and
41 operated so that the animal operation served by the animal waste management system
42 does not cause pollution in the waters of the State except as may result because of
43 rainfall from a storm event more severe than the 25-year, 24-hour ~~storm~~ storm or if

1 required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event
2 more severe than the 100-year, 24-hour storm.

3 (c) The Commission shall act on a permit application as quickly as possible and
4 may conduct any inquiry or investigation it considers necessary before acting on an
5 application.

6 (d) All applications for permits or for renewal of an existing permit shall be in
7 writing, and the Commission may prescribe the form of the applications. All
8 applications shall include an animal waste management system plan approved by a
9 technical specialist. The Commission may require an applicant to submit additional
10 information the Commission considers necessary to evaluate the application. Permits
11 and renewals issued pursuant to this section shall be effective until the date specified
12 therein or until rescinded unless modified or revoked by the Commission.

13 (e) An animal ~~Animal~~-waste management ~~plans~~-plan for an animal operation
14 shall include all of the following components:

- 15 (1) A checklist of potential odor sources and a choice of site-specific,
16 cost-effective remedial best management practices to minimize those
17 sources.
- 18 (2) A checklist of potential insect sources and a choice of site-specific,
19 cost-effective best management practices to minimize insect problems.
- 20 (3) Provisions that set forth acceptable methods of disposing of
21 mortalities.
- 22 (4) Provisions regarding best management practices for riparian buffers or
23 equivalent controls, particularly along perennial streams.
- 24 (5) Provisions regarding the use of emergency spillways and site-specific
25 emergency management plans that set forth operating procedures to
26 follow during emergencies in order to minimize the risk of
27 environmental damage.
- 28 (6) Provisions regarding periodic testing of waste products used as
29 nutrient sources as close to the time of application as practical and at
30 least within 60 days of the date of application and periodic testing, at
31 least annually, of soils at crop sites where the waste products are
32 applied. Nitrogen shall be ~~the~~a rate-determining element. Phosphorus
33 may be a rate-determining element for facilities that are subject to
34 regulation under 40 Code of Federal Regulations § 122.23 (1 July
35 2003). Phosphorus shall be evaluated according to the nutrient
36 management standard approved by the Soil and Water Conservation
37 Commission and the Natural Resources Conservation Service of the
38 United States Department of Agriculture. Zinc and copper levels in the
39 soils shall be monitored, and alternative crop sites shall be used when
40 these metals approach excess levels.
- 41 (7) Provisions regarding waste utilization plans that assure a balance
42 between nitrogen application rates and nitrogen crop requirements, that
43 assure that lime is applied to maintain pH in the optimum range for
44 crop production, and that include corrective action, including revisions

1 to the waste utilization plan based on data of crop yields and crops
2 analysis, that will be taken if this balance is not achieved as
3 determined by testing conducted pursuant to subdivision (6) of this
4 subsection.

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

11 (f) Any ~~owner or operator of an animal operation with a dry litter animal waste~~
12 ~~management system involving of a dry litter poultry facility that is not subject to~~
13 ~~regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) but that~~
14 involves 30,000 or more birds shall develop an animal waste management plan that
15 complies with the testing and record-keeping requirements under subdivisions (6)
16 through (8) of subsection (e) of this section. Any operator of this type of animal waste
17 management system shall retain records required under this section and by the
18 Department on-site for three years.

19 (f1) An animal waste management plan for a dry litter poultry facility subject to
20 regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall include
21 the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this
22 section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July
23 2003) for land application discharges, subdivision (4) of subsection (e) of this section.

24 (g) The Commission shall encourage the development of alternative and
25 innovative animal waste management technologies. The Commission shall provide
26 sufficient flexibility in the regulatory process to allow for the timely evaluation of
27 alternative and innovative animal waste management technologies and shall encourage
28 operators of animal waste management systems to participate in the evaluation of these
29 technologies. The Commission shall provide sufficient flexibility in the regulatory
30 process to allow for the prompt implementation of alternative and innovative animal
31 waste management technologies that are demonstrated to provide improved protection
32 to public health and the environment.

33 (h) The owner or operator of an animal waste management system shall:

- 34 (1) In the event of a discharge of 1,000 gallons or more of animal waste to
35 the surface waters of the State, issue a press release to all print and
36 electronic news media that provide general coverage in the county
37 where the discharge occurred setting out the details of the discharge.
38 The owner or operator shall issue the press release within 48 hours
39 after the owner or operator has determined that the discharge has
40 reached the surface waters of the State. The owner or operator shall
41 retain a copy of the press release and a list of the news media to which
42 it was distributed for at least one year after the discharge and shall
43 provide a copy of the press release and the list of the news media to
44 which it was distributed to any person upon request.

1 (2) In the event of a discharge of 15,000 gallons or more of animal waste
2 to the surface waters of the State, publish a notice of the discharge in a
3 newspaper having general circulation in the county in which the
4 discharge occurs and in each county downstream from the point of
5 discharge that is significantly affected by the discharge. The Secretary
6 shall determine, at the Secretary's sole discretion, which counties are
7 significantly affected by the discharge and shall approve the form and
8 content of the notice and the newspapers in which the notice is to be
9 published. The notice shall be captioned "NOTICE OF DISCHARGE
10 OF ANIMAL WASTE". The owner or operator shall publish the
11 notice within 10 days after the Secretary has determined the counties
12 that are significantly affected by the discharge and approved the form
13 and content of the notice and the newspapers in which the notice is to
14 be published. The owner or operator shall file a copy of the notice and
15 proof of publication with the Department within 30 days after the
16 notice is published. Publication of a notice of discharge under this
17 subdivision is in addition to the requirement to issue a press release
18 under subdivision (1) of this subsection.

19 (i) A person who obtains an individual permit under G.S. 143-215.1 for an
20 animal waste management system that serves a public livestock market shall not be
21 required to obtain a permit under this Part and is not subject to the requirements of this
22 Part."

23 **SECTION 3.** G.S. 143-215.10G reads as rewritten:

24 "(a) The Department shall charge an annual permit fee of all to an animal
25 operations- operation that are-is subject to a permit under G.S. 143-215.10C for an
26 animal waste management systems-system according to the following schedule:

- 27 (1) For a system with a design capacity of 38,500 or more and less than
28 100,000 pounds steady state live weight, fifty dollars (\$50.00).
29 (2) For a system with a design capacity of 100,000 or more and less than
30 800,000 pounds steady state live weight, one hundred fifty dollars
31 (\$150.00).
32 (3) For a system with a design capacity of 800,000 pounds or more steady
33 state live weight, three hundred dollars (\$300.00).

34 (a1) The Department shall charge an annual permit fee to a dry litter poultry
35 facility that is subject to a permit under G.S. 143-215.10C for an animal waste
36 management system according to the following schedule:

- 37 (1) For a system with a permitted capacity of less than 25,000 laying
38 chickens, less than 37,500 nonlaying chickens, or less than 16,500
39 turkeys, fifty dollars (\$50.00).
40 (2) For a system with a permitted capacity of 25,000 or more but less than
41 200,000 laying chickens, 37,500 or more but less than 290,000
42 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one
43 hundred fifty dollars (\$150.00).

1 (3) For a system with a permitted capacity of more than 200,000 laying
2 chickens, more than 290,000 nonlaying chickens, or more than
3 133,000 turkeys, three hundred dollars (\$300.00).

4 (b) An application for a new permit under this section shall be accompanied by
5 an initial application fee equal to the annual fee for that permit. If a permit is issued, the
6 application fee will be applied as the annual fee for the first year that the permit is in
7 effect. If the application is denied, the application fee shall not be refunded.

8 (c) Fees collected under this section shall be credited to the Water and Air
9 Quality Account. The Department shall use fees collected pursuant to this section to
10 cover the costs of administering this Part."

11 **SECTION 4.** An owner or operator of an animal operation or a dry litter
12 poultry facility shall apply for a permit as follows:

13 (1) An owner or operator of an animal operation in existence on or before
14 14 April 2003, and subject to regulation under federal regulations on
15 or before 14 April 2003, shall maintain continuous permit coverage
16 and comply with the phosphorous provisions of the most current
17 nutrient management standard on or before 1 July 2007.

18 (2) An owner or operator of a dry litter poultry facility in existence on or
19 before 14 April 2003, and with a poultry population that made it
20 subject to regulation under 40 Code of Federal Regulations § 122.23 (1
21 July 2003) only after 14 April 2003, shall apply for a permit no later
22 than 13 April 2006.

23 (3) An owner or operator of a dry litter poultry facility in existence on or
24 before 14 April 2003, who increases the poultry population of the
25 facility to a number that subjects the facility to regulation under 40
26 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or
27 before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90
28 days after the increase in population, whichever is later.

29 **SECTION 5.** The Commission shall consider the factors set out in
30 G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to
31 obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry
32 litter poultry facility that becomes subject to regulation under 40 Code of Federal
33 Regulations § 122.23 (1 July 2003) between 12 April 2003, and 1 January 2005. In
34 determining whether the violation was willful or intentional, the Commission shall
35 consider whether the facility developed an animal waste management plan pursuant to
36 G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the
37 facility complied with its animal waste management plan.

38 **SECTION 6.**

39 (1) In the event there is a final determination by a court of competent
40 jurisdiction that part or all of the federal regulations governing dry
41 litter poultry facilities are invalid, this act shall not be construed to
42 implement the invalid parts of the regulations or to apply the invalid
43 parts of the regulations to facilities otherwise made subject to those
44 federal regulations.

- 1 (2) This act shall not be construed to affect the provisions of Section 1.1
2 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section
3 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.
4 (3) This act shall not be construed to affect any federal permit requirement
5 that was in effect on or before the date this act becomes effective.
6 **SECTION 7.** This act becomes effective 1 January 2005.