

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1217*

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

Finance Committee Substitute No. 2 Adopted 6/18/96

Short Title: Animal Waste Recommendations.

(Public)

Sponsors:

Referred to:

May 20, 1996

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE BLUE RIBBON STUDY COMMISSION ON AGRICULTURAL WASTE.

The General Assembly of North Carolina enacts:

PART I. PERMITS/OPERATIONS REVIEWS/INSPECTIONS/FEES FOR ANIMAL

WASTE MANAGEMENT SYSTEMS FOR ANIMAL OPERATIONS

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

"PART 1A. ANIMAL WASTE MANAGEMENT SYSTEMS.

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

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting

1 program for animal waste management systems that will protect water quality and
2 promote innovative systems and practices while minimizing the regulatory burden.
3 Technical assistance, through operations reviews, will be provided by the Division of Soil
4 and Water Conservation. Permitting, inspection, and enforcement will be vested in the
5 Division of Environmental Management.

6 **"§ 143-215.10B. Definitions.**

7 As used in this Part:

- 8 (1) 'Animal operation' means any agricultural farming activity involving
9 250 or more swine, 100 or more confined cattle, 75 or more horses,
10 1,000 or more sheep, or 30,000 or more confined poultry with a liquid
11 animal waste management system. Public livestock markets or sales
12 regulated under Articles 35 and 35A of Chapter 106 of the General
13 Statutes shall not be considered animal operations for purposes of this
14 Part.
- 15 (2) 'Animal waste' means livestock or poultry excreta or a mixture of
16 excreta with feed, bedding, litter, or other materials from an animal
17 operation.
- 18 (3) 'Animal waste management system' means a combination of structures
19 and nonstructural practices serving a feedlot that provide for the
20 collection, treatment, storage, or land application of animal waste.
- 21 (4) 'Division' means the Division of Environmental Management of the
22 Department.
- 23 (5) 'Feedlot' means a lot or building or combination of lots and buildings
24 intended for the confined feeding, breeding, raising, or holding of
25 animals and either specifically designed as a confinement area in which
26 animal waste may accumulate or where the concentration of animals is
27 such that an established vegetative cover cannot be maintained. A
28 building or lot is not a feedlot unless animals are confined for 45 or
29 more days, which may or may not be consecutive, in a 12-month period.
30 Pastures shall not be considered feedlots for purposes of this Part.
- 31 (6) 'Technical specialist' means an individual designated by the Soil and
32 Water Conservation Commission, pursuant to rules adopted by that
33 Commission, to certify animal waste management plans.

34 **"§ 143-215.10C. Applications and permits.**

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

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

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

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

13 (e) Animal waste management plans shall include all of the following
14 components:

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

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

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

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

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

27 (6) Provisions regarding periodic testing of waste products used as nutrient
28 sources as close to the time of application as practical and at least within
29 60 days of the date of application and periodic testing, at least annually,
30 of soils at crop sites where the waste products are applied. Nitrogen
31 shall be the rate-determining element. Zinc and copper levels in the
32 soils shall be monitored, and alternative crop sites shall be used when
33 these metals approach excess levels.

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

41 (8) Provisions regarding the completion and maintenance of records on
42 forms developed by the Department, which records shall include
43 information addressed in subdivisions (6) and (7) of this subsection,

1 including the dates and rates that waste products are applied to soils at
2 crop sites, and shall be made available upon request by the Department.

3 (f) Any operator of an animal operation with a dry litter animal waste
4 management system involving 30,000 or more birds shall develop an animal waste
5 management plan that complies with the testing and record-keeping requirements under
6 subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of
7 animal waste management system shall retain records required under this section and by
8 the Department on-site for three years.

9 (g) The Commission shall encourage the development of alternative and
10 innovative animal waste management technologies. The Commission shall provide
11 sufficient flexibility in the regulatory process to allow for the timely evaluation of
12 alternative and innovative animal waste management technologies and shall encourage
13 operators of animal waste management systems to participate in the evaluation of these
14 technologies. The Commission shall provide sufficient flexibility in the regulatory
15 process to allow for the prompt implementation of alternative and innovative animal
16 waste management technologies that are demonstrated to provide improved protection to
17 public health and the environment.

18 **"§ 143-215.10D. Operations review.**

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

29 (b) As part of its animal waste management plan, each animal operation shall have
30 an operations review at least once a year. The operations review shall be conducted by a
31 technical specialist employed by the Division of Soil and Water Conservation of the
32 Department, a local Soil and Water Conservation District, or the federal Natural
33 Resources Conservation Services working under the direction of the Division of Soil and
34 Water Conservation.

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

37 **"§ 143-215.10E. Violations requiring immediate notification.**

38 (a) Any employee of a State agency or unit of local government lawfully on the
39 premises and engaged in activities relating to the animal operation who observes any of
40 the following violations shall immediately notify the owner or operator of the animal
41 operation and the Division:

42 (1) Any direct discharge of animal waste into the waters of the State.

1 (2) Any deterioration or leak in a lagoon system that poses an immediate
2 threat to the environment.

3 (3) Failure to maintain adequate storage capacity in a lagoon that poses an
4 immediate threat to public health or the environment.

5 (4) Overspraying animal waste either in excess of the limits set out in the
6 animal waste management plan or where runoff enters waters of the
7 State.

8 (5) Any discharge that bypasses a lagoon system.

9 (b) Any employee of a federal agency lawfully on the premises and engaged in
10 activities relating to the animal operation who observes any of the above violations is
11 encouraged to immediately notify the Division.

12 **"§ 143-215.10F. Inspections.**

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

17 **"§ 143-215.10G. Fees for animal waste management systems.**

18 The Department shall charge an annual permit fee of all animal operations that are
19 subject to a permit under G.S. 143-215.10C for animal waste management systems
20 according to the following schedule:

21 (1) For a system with a design capacity of 38,500 or more and less than
22 100,000 pounds steady state live weight, fifty dollars (\$50.00).

23 (2) For a system with a design capacity of 100,000 or more and less than
24 800,000 pounds steady state live weight, one hundred dollars (\$100.00).

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

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

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

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

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

36 (3) Alter, extend, or change the construction or method of operation of any
37 sewer system, treatment works, or disposal system within the State;
38 State.

39 (4) Increase the quantity of waste discharged through any outlet or
40 processed in any treatment works or disposal system to any extent ~~which~~
41 that would result in any violation of the effluent standards or limitations
42 established for any point source or ~~which that~~ would adversely affect the

1 condition of the receiving waters to the extent of violating any of the
2 ~~standards applicable to such water;~~ applicable standard.

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

8 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
9 in any manner intermixed with the waters of the State in violation of the
10 water quality standards applicable to the assigned classifications or in
11 violation of any effluent standards or limitations established for any
12 point source, unless allowed as a condition of any permit, special order
13 or other appropriate instrument issued or entered into by the
14 Commission under the provisions of this ~~Article;~~ Article.

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

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

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

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

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

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

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

41 (a2) ~~In connection with the above, no such~~ No permit shall be granted for the disposal
42 of waste in waters classified as sources of public water supply where the head of the
43 agency ~~which that~~ administers the public water supply program pursuant to Article 10 of

1 Chapter 130A of the General Statutes, after review of the plans and specifications for the
2 proposed disposal facility, determines and advises the Commission that ~~such~~ any outlet
3 for the disposal of waste is is, or would be, sufficiently close to the intake works or
4 proposed intake works of a public water supply as to have an adverse effect on the public
5 health.

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

11 PART II. SPECIAL ORDERS OF CONSENT/PENALTIES

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

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

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

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

41 PART III. CERTIFICATION/TRAINING OF ANIMAL WASTE 42 MANAGEMENT SYSTEM OPERATORS

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

1 (a) As used in this Part:

2 (1) 'Animal waste' means liquid residuals resulting from an animal
3 operation that are collected, treated, stored, or applied to the land
4 through an animal waste management system.

5 (2) 'Application' means laying, spreading on, irrigating, or injecting animal
6 waste onto land.

7 (3) 'Commission' means the Water Pollution Control System Operators
8 Certification Commission.

9 (4) 'Owner' means the person who owns or controls the land used for
10 agricultural purposes or the person's lessee or designee.

11 (5) 'Operator in charge' means a person who holds a currently valid
12 certificate to operate an animal waste management system and who has
13 primary responsibility for the operation of the system.

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

16 **"§ 90A-47.2. Certified operator in charge required; qualifications for certification.**

17 (a) No owner or other person in control of an animal operation having an animal
18 waste management system shall allow the system to be operated by a person who does
19 not hold a valid certificate as an operator in charge of an animal waste management
20 system issued by the Commission. No person shall perform the duties of an operator in
21 charge of an animal waste management system without being certified under the
22 provisions of this Part. Other persons may assist in the operation of an animal waste
23 management system so long as they are directly supervised by an operator in charge who
24 is certified under this Part.

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

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

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

37 (b) The Commission, in cooperation with the Division of Environmental
38 Management of the Department of Environment, Health, and Natural Resources, and the
39 Cooperative Extension Service, shall develop and administer a training program for
40 animal waste management system operators in charge. An applicant for initial
41 certification shall complete 10 hours of classroom instruction prior to taking the
42 examination. In order to remain certified, an animal waste management system operator
43 in charge shall complete six hours of approved additional training during each three-year

1 period following initial certification. A certified animal waste management system
2 operator in charge who fails to complete approved additional training within 30 days of
3 the end of the three-year period shall take and pass the examination for certification in
4 order to renew the certificate.

5 **"§ 90A-47.4. Fees; certificate renewals.**

6 (a) An applicant for certification under this Part shall pay a fee of ten dollars
7 (\$10.00) for the examination and the certificate.

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

12 **"§ 90A-47.5. Suspension; revocation of certificate.**

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

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

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

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

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

24 **"§ 90A-47.6. Rules.**

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

26 **PART IV. SWINE FARM SITING ACT/REQUIREMENTS/NOTICE**

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

28 **"ARTICLE 67.**

29 **"SWINE FARMS.**

30 **"§ 106-800. Title.**

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

32 **"§ 106-801. Purpose.**

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

38 **"§ 106-802. Definitions.**

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

40 (1) 'Lagoon' means a confined body of water to hold animal byproducts
41 including bodily waste from animals or a mixture of waste with feed,
42 bedding, litter or other agricultural ~~materials without discharge to surface~~

1 ~~waters of the State except in the event of a storm more severe than the 25-~~
2 ~~year, 24-hour storm. materials.~~

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

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

8 (4) ~~'Siting' or 'site'~~ 'Site evaluation' means an investigation to determine if a
9 site meets all federal and State standards as evidenced by the Waste
10 Management Facility Site Evaluation Report on file with the ~~Natural~~
11 ~~Resources Conservation Service~~ Soil and Water Conservation District
12 office or a comparable report certified by a professional engineer or a
13 comparable report certified by a technical specialist approved by the
14 North Carolina Soil and Water Conservation ~~Commission~~ and either of
15 which report provides the basis for certification by the Division of
16 Environmental Management pursuant to the rules appearing in the North
17 Carolina Administrative Code governing waste not discharged to surface
18 ~~waters.~~ Commission.

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

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

23 **"§ 106-803. Requirements ~~Siting requirements for siting swine houses and lagoons.~~**
24 **houses, lagoons, and land areas onto which waste is applied at swine**
25 **farms.**

26 (a) A swine house or a lagoon that is a component of a swine farm shall be located
27 at least 1,500 feet from any occupied residence; at least 2,500 feet from any school,
28 hospital, or church; and at least ~~400-500~~ feet from any property boundary. The outer
29 perimeter of the land area onto which waste is applied from a lagoon that is a component
30 of a swine farm shall be at least 50 feet from any ~~residential property boundary~~ boundary of
31 property on which an occupied residence is located and from any perennial stream or
32 river, other than an irrigation ditch or canal.

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

37 **"§ 106-804. Enforcement.**

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

42 (1) Injunctive relief.

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

1 (3) Damages caused by the violation.
2 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
3 the person owns:

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

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

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

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

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

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

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

26 **"§ 106-805. Written notice of swine farms.**

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

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

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

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

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

41 (5) Information informing the adjoining property owners and the property
42 owners who own property located across a public road, street, or
43 highway from the swine farm that they may submit written comments to

1 the Division of Environmental Management, Department of
2 Environment, Health, and Natural Resources."

3 (b) Subsection (a) of this section does not repeal any rule that does not conflict
4 with the amendments to Article 67 of Chapter 106 of the General Statutes made by
5 subsection (a) of this section.

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

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

12 (1) When the construction or enlargement occurs on or after October 1,
13 1995, for the purpose of increasing the swine population to that set forth
14 as the projected population in a registration of the swine operation filed
15 with the Department of Environment, Health, and Natural Resources
16 before October 1, 1995.

17 (2) When the construction or enlargement occurs on or after October 1,
18 1995, for the purpose of increasing the swine population to the
19 population that the animal waste management system is designed to
20 accommodate as that system is set forth in a registration of the swine
21 operation filed with the Department of Environment, Health, and
22 Natural Resources before October 1, 1995, or as that system is set forth
23 in an animal waste management plan approved before October 1, 1995.

24 (3) When the construction or enlargement occurs on or after October 1,
25 1995, for the purpose of complying with applicable animal waste
26 management rules and not for the purpose of increasing the swine
27 population."

28 **PART V. AGRICULTURAL COST SHARE PROGRAM**

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

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

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

41 "(6) State funding shall be limited to seventy-five percent (75%) of the
42 average cost for each practice with the assisted farmer providing
43 twenty-five percent (25%) of the cost (which may include in-kind

1 support) with a maximum of ~~fifteen thousand dollars (\$15,000) per year~~
2 seventy-five thousand dollars (\$75,000) per year to each applicant."

3 **PART VI. REPORTS/DEVELOPMENT OF COMPREHENSIVE**
4 **PLAN/STUDIES**

5 Sec. 11. (a) The Division of Soil and Water Conservation of the Department of
6 Environment, Health, and Natural Resources, the Cooperative Extension Service of North
7 Carolina State University, and the North Carolina Department of Agriculture shall
8 prepare a coordinated and comprehensive plan that includes use of existing resources at
9 the local level for nonpoint source pollution prevention and control. The plan shall
10 include mechanisms to be utilized that enhance communication, and provide
11 information, technical assistance, and environmental education. The plan shall also
12 include the following:

- 13 (1) Designate the Division of Soil and Water Conservation of the
14 Department of Environment, Health, and Natural Resources as the lead
15 agency with a defined line of authority for agricultural activities
16 affected by the nonpoint source pollution prevention/control plan.
- 17 (2) Identify the needs of agricultural crop and livestock operations and the
18 services provided by the various groups.
- 19 (3) Develop a strategic plan for interaction and communication with
20 farmers and livestock operations concerning implementation of
21 agricultural best management practices including nutrient management
22 plans and site-specific nutrient reduction efforts.

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

27 Sec. 12. The Environmental Review Commission shall evaluate the animal
28 waste permitting, inspection, and enforcement program established under Section 1 of
29 this act including, whether to transfer responsibility for permitting, compliance
30 inspections, and enforcement to the Division of Soil and Water Conservation. The
31 Commission may report its findings and recommendations to the General Assembly on or
32 before the first day of the 1997 Regular Session and shall report its findings and
33 recommendations on or before the first day of the 1998 Regular Session.

34 Sec. 13. Part 9A of Article 21 of Chapter 143 of the General Statutes is
35 repealed effective January 1, 1997. A person certified under Part 9A of Article 21 of
36 Chapter 143 of the General Statutes shall be certified as an animal waste management
37 system operator by the Water Pollution Control System Operators Certification
38 Commission without additional preexamination training, examination, or payment of an
39 initial certification fee. A person certified under Part 9A of Article 21 of Chapter 143 of
40 the General Statutes shall complete approved additional training and pay the annual
41 renewal fee in order to maintain certification.

42 Sec. 14. (a) All operators of animal waste management systems, as defined in
43 G.S. 143-215.10B, as enacted by Section 1 of this act, shall register with their local Soil

1 and Water Conservation District office and initiate the process to obtain an approved
2 animal waste management plan pursuant to 15A N.C.A.C. 2H.0217. Operators who
3 initiate the process of obtaining an approved animal waste management plan before 1
4 September 1996 shall receive priority for inclusion in the Nonpoint Source Pollution
5 Control Program pursuant to G.S. 143-215.74, et seq., including priority for technical
6 assistance and State funding.

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

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

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

22 Sec. 15. The Environmental Management Commission shall develop a
23 definition for the term "chronic rainfall". The Commission shall review the meaning of
24 "no discharge of pollutants" as used in the definition of "animal waste management
25 system" in its animal waste management rules to determine whether this phrase
26 constitutes a no discharge requirement and whether this phrase creates a performance
27 standard or a technology standard. The Commission shall clarify the meaning of "no
28 discharge" such that the no discharge requirement for animal waste management systems
29 is economically practical and technologically achievable. The Commission shall
30 complete the requirements of this section by 1 October 1996.

31 Sec. 16. No later than September 1, 1996, the Soil and Water Conservation
32 Commission shall specify odor control best management practices, insect control best
33 management practices, and best management practices for riparian buffers or equivalent
34 controls consistent with the provisions of G.S. 143-215.10C(e)(1), (2), and (4), as enacted
35 by Section 1 of this act.

36 Sec. 17. No later than October 1, 1996, the Environmental Management
37 Commission and the Soil and Water Conservation Commission, with technical assistance
38 from the Cooperative Extension Service, shall establish the record-keeping requirements
39 under G.S. 143-215.1C(e)(8), as enacted by Section 2 of this act. The Natural Resources
40 Conservation Service is encouraged to cooperate fully with establishing these
41 requirements.

42 Sec. 18. (a) An interagency group is created to:

- 1 (1) Address questions from technical specialists and provide uniform
2 interpretations to technical specialists regarding the requirements of the
3 animal waste management rules.
- 4 (2) Publish its decisions on these questions on a regular and recurring basis.
- 5 (3) Provide uniform strategies for operators of intensive livestock
6 operations to meet the December 31, 1997, deadline to obtain an
7 approved animal waste management plan.
- 8 (4) Develop, no later than August 1, 1996, a standard for the use of riparian
9 buffers or equivalent controls as best management practices, particularly
10 along perennial streams; decide whether a uniform State standard, a
11 uniform basinwide standard, or a site-specific standard best protects
12 water quality; and submit the standard that the group decides upon to
13 the Soil and Water Conservation Commission for adoption in
14 developing best management practices for riparian buffers and
15 equivalent controls under Section 6 of this act.

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

27 **PART VII. EFFECTIVE DATES/MISCELLANEOUS PROVISIONS**

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

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

- 32 (c)(1) G.S. 143-215.10C, as enacted by Section 1 of this act, becomes
33 effective January 1, 1997. In order to ensure an orderly and cost-
34 effective phase-in of the permit program, the Department of
35 Environment, Health, and Natural Resources shall issue permits for
36 animal operations over a five-year period. The Department shall issue
37 permits for approximately twenty percent (20%) of the animal waste
38 management facilities that are in operation on January 1, 1997, during
39 each of the five calendar years beginning January 1, 1997, and shall
40 give priority to those animal waste management systems serving the
41 largest animal operations. An animal waste management system that is
42 deemed permitted by rule on January 1, 1997, under 15A N.C.A.C.

- 1 2H.0217 may continue to operate on a deemed permitted basis as
2 provided in subsection (b) of this section.
- 3 (2) In accordance with its phase-in schedule, the Department shall notify
4 each owner or operator of an animal waste management system that is
5 deemed permitted of the date by which an application for a permit for
6 that animal waste management system shall be submitted by certified
7 mail. An owner or operator of an animal waste management system
8 who fails to submit an application for a permit by the date specified by
9 the Department shall not operate the animal waste management system
10 after that date. An animal waste management system that is authorized
11 to continue operation under this section and for which a timely
12 application for a permit is submitted may continue to operate on a
13 deemed permitted basis until the Department either issues a permit or
14 notifies the owner or operator that the application for a permit is denied.
15 An animal waste management system that is deemed permitted shall be
16 subject to the annual operational review and annual inspection
17 requirements as though it were permitted.
- 18 (3) The Department shall act on an application for a permit for a new
19 facility or for the expansion of an existing facility within 90 days after
20 the Department receives the application.
- 21 (4) Notwithstanding G.S. 143-215.10C (a) through (d), a dry litter animal
22 waste management system involving 30,000 or more birds shall
23 continue to operate on a deemed permitted basis by rule under 15A
24 N.C.A.C. 2H.0217 and shall comply with the animal waste management
25 plan testing and record-keeping requirements by January 1, 1998.
- 26 (d) G.S. 143-215.10D, as enacted by Section 1 of this act, becomes effective
27 September 1, 1996.
- 28 (e) G.S. 143-215.10E, as enacted by Section 1 of this act, is effective upon
29 ratification.
- 30 (f) G.S. 143-215.10F, as enacted by Section 1 of this act, becomes effective
31 January 1, 1997.
- 32 (g) G.S. 143-215.10G, as enacted by Section 1 of this act, becomes effective
33 January 1, 1997.
- 34 Sec. 20. Section 2 of this act becomes effective January 1, 1997.
- 35 Sec. 21. Sections 3 and 4 of this act are effective upon ratification and apply to
36 violations that occur on or after that date.
- 37 Sec. 22. Section 5 of this act becomes effective October 1, 1996. In order to
38 maintain staggered terms on the Water Pollution Control System Operator Certification
39 Commission, of the two new members added to the Commission by Section 5 of this act,
40 the initial term of one appointee shall expire on 30 June 1998 and the initial term of the
41 other appointee shall expire on 30 June 1999.

1 Sec. 23. Section 6 of this act is effective upon ratification, except that G.S.
2 90A-47.2(a), as enacted by subsection (b) of Section 6 of this act, becomes effective
3 January 1, 1997.

4 Sec. 24. Sections 7 and 8 of this act are effective upon ratification, except that
5 the change from 100 to 500 feet made in G.S. 106-803(a) by Section 7 of this act does not
6 apply to a swine farm for which a site evaluation was conducted prior to October 1, 1996.

7 Sec. 25. This act constitutes a recent act of the General Assembly within the
8 meaning of G.S. 150B-21.1. The Environmental Management Commission, the Soil and
9 Water Conservation Commission, and the Water Pollution Control System Operators
10 Certification Commission, may adopt temporary rules to implement this act.

11 Sec. 26. Sections 9 through 26 of this act are effective upon ratification.