

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-176
HOUSE BILL 1112**

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.
- (4) "Division" means the Division of Water Quality of the Department.
- (5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.
- (6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

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

"§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general

permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

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

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour ~~storm-storm~~ or if required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.

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

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

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

- (1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.
- (2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.
- (3) Provisions that set forth acceptable methods of disposing of mortalities.
- (4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.
- (5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.
- (6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be ~~the~~ a rate-determining element. Phosphorus

shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

- (7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.
- (8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

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

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

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

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

- (1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which

it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

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

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

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

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

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

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

- (1) For a system with a permitted capacity of less than 25,000 laying chickens, less than 37,500 nonlaying chickens, or less than 16,500 turkeys, fifty dollars (\$50.00).
- (2) For a system with a permitted capacity of 25,000 or more but less than 200,000 laying chickens, 37,500 or more but less than 290,000 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one hundred fifty dollars (\$150.00).
- (3) For a system with a permitted capacity of more than 200,000 laying chickens, more than 290,000 nonlaying chickens, or more than 133,000 turkeys, three hundred dollars (\$300.00).

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

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

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

- (1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.
- (2) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.
- (3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later.

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

SECTION 6.

- (1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.
- (2) This act shall not be construed to affect the provisions of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.
- (3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective.

SECTION 7. The Department of Environment and Natural Resources shall evaluate the need for and availability of information that identifies poultry facilities that may be subject to regulation under G.S. 143-215.10C, as amended by Section 2 of this act. If the Department determines that it does not have sufficient identifying information to adequately implement G.S. 143-215.10C, the Department shall evaluate options for obtaining this information. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 January 2005.

SECTION 8. This act becomes effective 1 January 2005.
In the General Assembly read three times and ratified this the 14th day of
July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:04 p.m. this 2nd day of August, 2004