

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 85
Committee Substitute Favorable 3/24/97

Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
3 AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
4 THE ENVIRONMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. This act shall be known and may be cited as the "Environmentally
7 Sound Policy Act of 1997 (ESP)".

8 Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

9 "ARTICLE 67.

10 "Swine Farms.

11 "§ 106-800. Title.

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

13 "§ 106-801. Purpose.

14 The General Assembly finds that certain limitations on the siting of swine houses and
15 lagoons for swine farms can assist in the development of pork production, which
16 contributes to the economic development of the State, by lessening the interference with
17 the use and enjoyment of adjoining property.

18 "§ 106-802. Definitions.

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

- 1 (1a) 'Intensive animal feeding operation' means a new or enlarged swine
2 farm with a design capacity of more than 800,000 pounds steady state
3 live weight.
4 (1) 'Lagoon' means a confined body of water to hold animal byproducts
5 including bodily waste from animals or a mixture of waste with feed,
6 bedding, litter or other agricultural materials.
7 (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.
8 (3) 'Occupied residence' means a dwelling actually inhabited by a person on
9 a continuous basis as exemplified by a person living in his or her home.
10 (4) 'Site evaluation' means an investigation to determine if a site meets all
11 federal and State standards as evidenced by the Waste Management
12 Facility Site Evaluation Report on file with the Soil and Water
13 Conservation District office or a comparable report certified by a
14 professional engineer or a comparable report certified by a technical
15 specialist approved by the North Carolina Soil and Water Conservation
16 Commission.

17 ~~Department of Environment, Health and Natural Resources~~

- 18 (5) 'Swine farm' means a tract of land devoted to raising 250 or more
19 animals of the porcine species.
20 (6) 'Swine house' means a building that shelters porcine animals on a
21 continuous basis.

22 **"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto**
23 **which waste is applied at swine farms.**

- 24 (a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~
25 located:
26 (1) ~~at~~ At least 1,500 feet from any occupied residence;
27 (2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or
28 forest, wildlife refuge, fragile or historic area, area or facility used for
29 outdoor recreation, or church;
30 (3) At least 1,320 feet from any surface waters of the State;
31 (4) At least 1,000 feet from any property boundary for any new or enlarged
32 swine farm with a design capacity of at least 500,000 pounds steady
33 state live weight;
34 (5) At least 1,500 feet from any property boundary for any new or enlarged
35 swine farm with a design capacity of more than 1,000,000 pounds
36 steady state live weight;
37 (6) ~~at~~ At least 500 feet from any property boundary—boundary or public or
38 private drinking water supply.

39 The outer perimeter of the land area onto which waste is applied from a lagoon that is
40 a component of a swine farm shall be at least ~~50-100~~ feet from any boundary of property
41 on which an occupied residence is located from any perennial stream or river, other than
42 an irrigation ditch or canal.

1 (a) A new or expanding swine house or a lagoon that is a component of a swine
2 farm shall not be located in a 100-year floodplain unless protected from flooding as
3 provided for in regulations of the Federal Emergency Management Agency and the
4 National Flood Insurance Program on Floodplain Management. Such construction or
5 expansion must be certified by the Department of Environment, Health, and Natural
6 Resources.

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

11 **"§ 106-804. Enforcement.**

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

16 (1) Injunctive relief.

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

18 (3) Damages caused by the violation.

19 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
20 the person ~~owns~~ owns a facility or property located less than the siting requirements
21 specified under G.S. 106-803.

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

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

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

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

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

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

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

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

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

- (1) The name and address of the person intending to construct a swine farm.
- (2) The type of swine farm and the design capacity of the animal waste management system.
- (3) The name and address of the technical specialist preparing the waste management plan.
- (4) The address of the local Soil and Water Conservation District office.
- (5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuing a permit for an intensive animal feeding operation, the Department shall conduct a public hearing at the applicant's expense if the Department receives at least 20 written requests for the public hearing.

"§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.

(a) No intensive animal feeding operation may cause, allow, or permit emission into the ambient air of an outdoor recreational area any substance or combination of substances in a quantity that is determined to be an undesirable level of odor unless preventative measures are taken to abate or control the emission to the satisfaction of the Department of Environment, Health, and Natural Resources. When the Department receives an odor complaint, the Department shall determine through field surveillance or specific complaints, if the odor is at an undesirable level, and shall require remediation of the undesirable level of odor.

(b) Nothing in this section shall prohibit an individual or group of persons from bringing a complaint against an intensive animal feeding operation as defined under G.S. 106-802."

Section 3. G.S. 143-215(e) is repealed.

Section 4. G.S. 153A-340 reads as rewritten:

"§ 153A-340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings,

1 structures, and land for trade, industry, residence, or other purposes, and to provide
2 density credits or severable development rights for dedicated rights-of-way pursuant to
3 G.S. 136-66.10 or G.S. 136-66.11.

4 (b) These regulations may not affect bona fide farms, but any use of farm property
5 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the
6 production and activities relating or incidental to the production of crops, fruits,
7 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms
8 of agricultural products having a domestic or foreign market. These regulations may
9 apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive
10 animal feeding operation is not a farm for the purpose of this Part.

11 (c) The regulations may provide that a board of adjustment may determine and
12 vary their application in harmony with their general purpose and intent and in accordance
13 with general or specific rules therein contained. The regulations may also provide that
14 the board of adjustment or the board of commissioners may issue special use permits or
15 conditional use permits in the classes of cases or situations and in accordance with the
16 principles, conditions, safeguards, and procedures specified therein and may impose
17 reasonable and appropriate conditions and safeguards upon these permits. Where
18 appropriate, the conditions may include requirements that street and utility rights-of-way
19 be dedicated to the public and that recreational space be provided. When issuing or
20 denying special use permits or conditional use permits, the board of commissioners shall
21 follow the procedures for boards of adjustment except that no vote greater than a majority
22 vote shall be required for the board of commissioners to issue such permits, and every
23 such decision of the board of commissioners shall be subject to review by the superior
24 court by proceedings in the nature of certiorari.

25 (d) A county may regulate the development over estuarine waters and over lands
26 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
27 bounds of that county.

28 (e) For the purpose of this section, the term 'structures' shall include floating
29 homes.

30 (f) Any petition for review by the superior court shall be filed with the clerk of
31 superior court within 30 days after the decision of the board of commissioners is filed in
32 such office as the ordinance specifies, or after a written copy thereof is delivered to every
33 aggrieved party who has filed a written request for such copy with the clerk at the time of
34 the hearing of the case, whichever is later. The decision of the board of commissioners
35 may be delivered to the aggrieved party either by personal service or by registered mail
36 or certified mail return receipt requested."

37 Section 5. A zoning regulation applicable to intensive animal feeding
38 operations adopted by a board of county commissioners prior to the date Section 4 of this
39 act becomes effective is hereby retroactively validated.

40 Section 6. There is established a one-year moratorium for any new or
41 expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter
42 143 of the General Statutes for any area in the State that: (i) has a county population of
43 less than 75,000 according to the most recent decennial federal census; (ii) has over one

1 hundred fifty million dollars (\$150,000,000) on expenditures for travel and tourism based
2 on the most recent figures of the Department of Commerce; and (iii) is not in the coastal
3 area as defined by G.S. 113A-103. Effective 1 January 1997, until 31 December 1997,
4 no permit for a new or expanding swine farm or lagoon shall be issued by the
5 Environmental Management Commission.

6 Section 7. There is established a one-year moratorium on the construction or
7 expansion of swine farms and lagoons. The Environmental Management Commission
8 shall not issue a permit for an animal waste management system, as defined in G.S. 143-
9 215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a
10 one-year period beginning on the date this act becomes effective except as provided by
11 this section. This section prohibits the construction or expansion of an animal waste
12 management system for a swine farm for one year from the date this act becomes
13 effective regardless of the date on which a site evaluation for the swine farm is completed
14 and regardless of whether the animal waste management system is permitted under Part
15 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A
16 North Carolina Administrative Code 2H.0217 but does not prohibit:

- 17 (1) Construction to repair a component of an existing swine farm or lagoon.
- 18 (2) Construction to replace a component of an existing swine farm or
19 lagoon if the replacement does not result in an increase in swine
20 population, except as provided in subdivision (4) of this section.
- 21 (3) Construction or expansion, if actual construction, including purchase or
22 delivery of material or equipment, began prior to 1 March 1997.
- 23 (4) Construction or expansion on or after the date this act becomes law for
24 the purpose of increasing the swine population to the projected
25 population or to the population that the animal waste management
26 system serving that swine farm is designed to accommodate, as set forth
27 in a registration of the swine operation filed with the Department of
28 Environment, Health, and Natural Resources before the date this act
29 becomes law.
- 30 (5) Construction or expansion on or after the date this act becomes law for
31 the purpose of complying with applicable animal waste management
32 rules and not for the purpose of increasing the swine population.

33 Section 8. (a) Except as provided in subsection (b) of this section, Section 2 of
34 this act is effective when it becomes law and applies to the construction or enlargement,
35 on or after the effective date of this act, of swine houses, lagoons, and land areas onto
36 which waste is applied from a lagoon that are components of a swine farm. Section 2 of
37 this act does not apply under each of the following circumstances when the construction
38 or enlargement occurs on or after the effective date of this act:

- 39 (1) For the purpose of increasing the swine population to that set forth as
40 the projected population in a registration of the swine operation filed
41 with the Department of Environment, Health, and Natural Resources
42 prior to the effective date of this act.

- 1 (2) For the purpose of increasing the swine population to the population
2 that the animal waste management system is designed to accommodate
3 as that system is set forth in a registration of the swine operation filed
4 with the Department of Environment, Health, and Natural Resources, or
5 an animal waste management plan approved prior to the effective date
6 of this act.
- 7 (3) For the purpose of complying with applicable animal waste
8 management rules and not for the purpose of increasing the swine
9 population.
- 10 (b) Section 1 and Sections 3 through 8 of this act are effective when this act
11 becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act
12 applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended
13 by Section 2 of this act, apply to any intensive animal feeding operation for which
14 construction began on or after 1 January 1997, regardless of the date on which the site
15 evaluation was completed.