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Short Title: Phosphorus Nutrient Mgt./Animal Feedlots.

(Public)

Sponsors:

Referred to:

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.

- 1 (3) "Animal waste management system" means a combination of
2 structures and nonstructural practices serving a feedlot that provide for
3 the collection, treatment, storage, or land application of animal waste.
4 (4) "Division" means the Division of Water Quality of the Department.
5 (5) "Feedlot" means a lot or building or combination of lots and buildings
6 intended for the confined feeding, breeding, raising, or holding of
7 animals and either specifically designed as a confinement area in
8 which animal waste may accumulate or where the concentration of
9 animals is such that an established vegetative cover cannot be
10 maintained. A building or lot is not a feedlot unless animals are
11 confined for 45 or more days, which may or may not be consecutive,
12 in a 12-month period. Pastures shall not be considered feedlots for
13 purposes of this Part.
14 (6) "Technical specialist" means an individual designated by the Soil and
15 Water Conservation Commission, pursuant to rules adopted by that
16 Commission, to certify animal waste management plans."

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

18 **"§ 143-215.10C. Applications and permits.**

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

37 (a1) An owner or operator of an animal waste management system for an animal
38 operation or a dry litter poultry facility that is subject to regulation under 40 Code of
39 Federal Regulations § 122.23(c)(3) (1 July 2003) shall apply for an individual permit or
40 a general permit under this Article within 90 days of notification by the Department that
41 the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3)
42 (1 July 2003).

43 (b) An animal waste management system shall be designed, constructed, and
44 operated so that the animal operation served by the animal waste management system

1 does not cause pollution in the waters of the State except as may result because of
2 rainfall from a storm event more severe than the 25-year, 24-hour ~~storm~~-storm or if
3 required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event
4 more severe than the 100-year, 24-hour storm.

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

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

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

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

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

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

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

23 (f1) An animal waste management plan for a dry litter poultry facility subject to
24 regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall include
25 the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this
26 section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July
27 2003) for land application discharges, subdivision (4) of subsection (e) of this section.

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

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

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

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

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

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

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

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

- 31 (1) For a system with a design capacity of 38,500 or more and less than
32 100,000 pounds steady state live weight, fifty dollars (\$50.00).
33 (2) For a system with a design capacity of 100,000 or more and less than
34 800,000 pounds steady state live weight, one hundred fifty dollars
35 (\$150.00).
36 (3) For a system with a design capacity of 800,000 pounds or more steady
37 state live weight, three hundred dollars (\$300.00).

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

- 41 (1) For a system with a permitted capacity of less than 25,000 laying
42 chickens, less than 37,500 nonlaying chickens, or less than 16,500
43 turkeys, fifty dollars (\$50.00).

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

5 (3) For a system with a permitted capacity of more than 200,000 laying
6 chickens, more than 290,000 nonlaying chickens, or more than
7 133,000 turkeys, three hundred dollars (\$300.00).

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

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

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

17 (1) An owner or operator of an animal operation in existence on or before
18 14 April 2003, and subject to regulation under federal regulations on
19 or before 14 April 2003, shall maintain continuous permit coverage
20 and comply with the phosphorous provisions of the most current
21 nutrient management standard on or before 1 July 2007.

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

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

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

42 **SECTION 6.**

43 (1) In the event there is a final determination by a court of competent
44 jurisdiction that part or all of the federal regulations governing dry

1 litter poultry facilities are invalid, this act shall not be construed to
2 implement the invalid parts of the regulations or to apply the invalid
3 parts of the regulations to facilities otherwise made subject to those
4 federal regulations.

5 (2) This act shall not be construed to affect the provisions of Section 1.1
6 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section
7 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.

8 (3) This act shall not be construed to affect any federal permit requirement
9 that was in effect on or before the date this act becomes effective.

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

18 **SECTION 8.** This act becomes effective 1 January 2005.