

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80244-RT-19 (03/26)

Short Title: Phase Out Swine Waste Lagoons & Sprayfields.

(Public)

Sponsors: Representative Luebke.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CODIFY AND MAKE PERMANENT THE SWINE FARM ANIMAL WASTE MANAGEMENT SYSTEM PERFORMANCE STANDARDS THAT THE GENERAL ASSEMBLY ENACTED IN 1998 AND TO PHASE OUT THE USE OF THE LAGOON AND SPRAYFIELD ANIMAL WASTE MANAGEMENT SYSTEM FOR SWINE FARMS.

The General Assembly of North Carolina enacts:

SECTION 1. 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, and Section 1 of S.L. 2001-254, is codified as G.S. 143-215.10I and reads as rewritten:

"§ 143-215.10I. Performance standards for animal waste management systems that serve swine farms; lagoon and sprayfield systems prohibited.

(a) ~~Moratorium Established.~~—As used in this section:

(1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802.

(2) ~~'Animal waste management system' has the same meaning as in G.S. 143-215.10B.~~

(3)(2) 'Anaerobic lagoon' means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.

(4)(3) 'Anaerobic process' means a biological treatment process that occurs in the absence of dissolved oxygen.

(a1) ~~There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra~~

1 Session); and to allow the 1999 General Assembly to receive and act on the findings
2 and recommendations of those studies. Except as provided in subsection (b) of this
3 section, the Environmental Management Commission shall not issue a permit for an
4 animal waste management system for a new swine farm or the expansion of an existing
5 swine farm for a period beginning on 1 March 1997 and ending on 1 September 2003.
6 The construction or expansion of a swine farm or animal waste management system for
7 a swine farm is prohibited during the period of the moratorium regardless of the date on
8 which a site evaluation for the swine farm is completed and regardless of whether the
9 animal waste management system is permitted under G.S. 143-215.1 or Part 1A of
10 Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North
11 Carolina Administrative Code 2H.0217.

12 (b) Exceptions. — The moratorium established by subsection (a1) of this section
13 does not prohibit:

- 14 (1) Construction to repair a component of an existing swine farm or
15 lagoon.
- 16 (2) Construction to replace a component of an existing swine farm or
17 lagoon if the replacement does not result in an increase in swine
18 population, except as provided in subdivision (3) (7), or (8) of this
19 subsection.
- 20 (3) Construction or expansion for the purpose of increasing the swine
21 population to the projected population or to the population that the
22 animal waste management system serving that swine farm is designed
23 to accommodate, as set forth in a certified animal waste management
24 plan filed with the Department of Environment, Health, and Natural
25 Resources prior to 1 March 1997.
- 26 (4) Construction or expansion for the purpose of complying with
27 applicable animal waste management rules and not for the purpose of
28 increasing the swine population.
- 29 (5) Construction or expansion, if the person undertaking the construction
30 or expansion of the swine farm, lagoon, or animal waste management
31 system has been issued a permit for that construction or expansion
32 under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the
33 General Statutes prior to the date this act becomes effective.
- 34 (6) Construction or expansion, if the person undertaking the construction
35 or expansion of the swine farm, lagoon, or animal waste management
36 system has, prior to 1 March 1997, either:
 - 37 a. Laid a foundation for a component of the swine farm, lagoon, or
38 animal waste management system.
 - 39 b. Entered into a bona fide written contract for the construction or
40 expansion of the swine farm, lagoon, or animal waste
41 management system.
 - 42 c. Been approved for a loan or line of credit to finance the
43 construction or expansion of the swine farm, lagoon, or animal

- 1 waste management system and has obligated or expended funds
2 derived from the loan or line of credit.
- 3 (7) ~~Construction or expansion of an animal waste management system that
4 does not employ an anaerobic lagoon as the primary method of
5 treatment, does not employ land application of waste except by
6 injection into soil or by surface application if the injection or surface
7 application meets the requirements of sub-subdivisions a. through e. of
8 this subdivision, and is designed to be the subject of a research project.
9 The Environmental Management Commission shall issue a permit for
10 the construction or expansion of an animal waste management system
11 under this subdivision only if the Commission determines, after
12 consultation with the Animal and Poultry Waste Management Center
13 of North Carolina State University, that additional research is
14 necessary to evaluate whether the animal waste treatment system will:~~
- 15 a. ~~Eliminate the discharge of animal waste to surface waters and
16 groundwater through direct discharge, seepage, or runoff.~~
- 17 b. ~~Substantially eliminate atmospheric emissions of ammonia.~~
- 18 c. ~~Substantially eliminate the emission of odor that is detectable
19 beyond the boundaries of the parcel or tract of land on which
20 the swine farm is located.~~
- 21 d. ~~Substantially eliminate the release of disease transmitting
22 vectors and airborne pathogens.~~
- 23 e. ~~Substantially eliminate nutrient and heavy metal contamination
24 of soil and groundwater.~~
- 25 (8) ~~Construction~~ The Department shall not issue or modify a permit to
26 authorize the construction, operation, or expansion of an animal waste
27 management system that does not employ employs ~~an anaerobic lagoon~~
28 ~~as the primary method of treatment and does not employ land~~
29 ~~application of waste by means of a sprayfield as the method of waste~~
30 ~~disposal. except by injection into soil or by surface application if the~~
31 ~~injection or surface application meets the requirements of sub-~~
32 ~~subdivisions a. through e. of this subdivision. The Environmental~~
33 ~~Management Commission may issue permits under this subdivision~~
34 ~~only in a manner consistent with G.S. 143-215.1(b)(2). The~~
35 ~~Commission shall~~ may ~~issue a permit for the construction~~ construction,
36 operation, ~~or expansion of an animal waste management system under~~
37 ~~this subdivision~~ Article ~~only if the Commission determines, after~~
38 ~~consultation with the Animal and Poultry Waste Management Center~~
39 ~~of North Carolina State University, that the animal waste management~~
40 ~~system has been in use on a swine farm with climatic conditions and~~
41 ~~soil characteristics that are similar to those that will be encountered at~~
42 ~~the proposed site of the swine farm for at least a year, that the animal~~
43 ~~waste management system has been evaluated for at least a year, and~~
44 ~~that sufficient data exists to establish~~ determines ~~that the animal waste~~

1 management system ~~will~~ will meet or exceed all of the following
2 performance standards:

- 3 a.~~(1)~~ Eliminate the discharge of animal waste to surface ~~waters~~ water and
4 groundwater through direct discharge, seepage, or runoff.
5 b.~~(2)~~ Substantially eliminate atmospheric ~~emissions~~ emission of ammonia.
6 e.~~(3)~~ Substantially eliminate the emission of odor that is detectable beyond
7 the boundaries of the parcel or tract of land on which the swine farm is
8 located.
9 d.~~(4)~~ Substantially eliminate the release of disease-transmitting vectors and
10 airborne pathogens.
11 e.~~(5)~~ Substantially eliminate nutrient and heavy metal contamination of soil
12 and groundwater.

13 (e) ~~Establishing Eligibility for an Exemption.~~ It shall be the responsibility of an
14 applicant for a permit for an animal waste management system for a new swine farm or
15 for the expansion of an existing swine farm under subdivisions (1) through (8) of
16 subsection (b) of this section to provide information and documentation to the
17 Department of Environment, Health, and Natural Resources that establishes, to the
18 satisfaction of the Department, that the applicant is eligible for the permit. In
19 demonstrating eligibility for a permit under this section, the burden of proof shall be on
20 the applicant.

21 (d) ~~Rule Making Not Required; Administrative and Judicial Review.~~—
22 Notwithstanding the provisions of Article 2A of Chapter 150B of the General Statutes,
23 this section shall not be construed to obligate the Commission or the Department to
24 adopt a temporary or permanent rule to implement this section. The Commission and
25 the Department shall implement the provisions of this section by evaluating each
26 application for a permit for an animal waste management system on a case by case
27 basis. A decision of the Commission or the Department under this section is subject to
28 administrative and judicial review as provided in Articles 3 and 4 of Chapter 150B of
29 the General Statutes."

30 **SECTION 2.** This act becomes effective September 1, 2003, and applies to
31 any application for a new permit or to modify a permit for an animal waste management
32 system that serves a swine farm. An animal waste management system that serves a
33 swine farm for which a permit was issued prior to September 1, 2003, and that does not
34 meet the requirements of G.S. 143-215.10I, as enacted by Section 1 of this act, may
35 continue to operate under, and shall operate in compliance with, that permit until the
36 later of September 1, 2008, or 10 years from the date on which the animal waste
37 management was first permitted or deemed permitted. The owner or operator of an
38 animal waste management system that employs a lagoon and sprayfield system that is
39 phased out pursuant to this act shall close all of the components of the animal waste
40 management system in compliance with all applicable federal and State laws,
41 regulations, and rules.