

[242] March 11, 1996

The Honorable Arlie F. Culp North Carolina House of Representatives 8521 U.S. Highway 64 East
Ramseur, N.C. 27316

RE: Advisory Opinion: Meaning and Applicability of the Swine Farm Siting Act; G.S. § 106-800 et seq..

Dear Representative Culp:

Dewey Botts, Director of the Soil and Water Conservation Division, has written this office two memoranda requesting our opinion on aspects of G.S. §106-800, the Swine Farm Siting Act. Copies of the memoranda are attached. We answered those questions with three advisory memoranda, each attempting to address different aspects of the Act applicable to the work of the Soil and Water Conservation Division. You requested by phone call that we render our advice on these matters in an advisory opinion, particularly concerning the definition of "sited." The following day, the Technical Review Committee, which advises the Division of Soil and Water Conservation suggested that we incorporate categorizations regarding "retrofitted" lagoons into this opinion for clarification purposes.

On July 11, 1995, the General Assembly enacted Senate Bill 1080 entitled "An Act to Place Certain Restrictions on the Siting of Swine Houses and Lagoons." This Act added Article 67 to Chapter 106 of the General Statutes, the Chapter dealing with Agriculture. The popular title assigned to this Article is the "Swine Farm Siting Act." The stated purpose reads as follows: "The General Assembly finds that the siting of swine houses and lagoons for larger farms can assist in the development of pork production to contribute to the economic development of the State while minimizing any interference with the use and enjoyment of adjoining property." G.S. § 106-801

This Act was intended to restrict the siting of swine houses and lagoons to minimize interference with neighbors' property rights. There was no North Carolina General Statute restricting the siting of swine houses and lagoons before this Act. Previous General Assemblies had addressed siting issues by empowering incorporated cities to make and enforce ordinances excluding swine herds or farms. In addition, the Supreme Court of North Carolina has held that private parties may enforce a city ordinance against a hog farm through injunction.

The Act placed statewide setback requirements on swine houses, lagoons and sprayfields. The Act requires that a swine house be located at least 1,500 feet from any occupied residence. Larger setbacks apply near schools, hospitals and churches. Shorter setbacks apply to property boundaries. The setbacks can be waived. A swine farm owner can site a swine house or lagoon inside the setback by obtaining written permission from the neighbor encroached. The Act requires the owner to record this written permission with the Register of Deeds.

The question posed by Mr. Botts' letter of January 18, 1996 concerned how to interpret the term "sited" as used in the Act. The Act only applies to swine farms "whose operations were sited on or after October 1, 1995." The term "sited" is not defined in the Act, although "siting" and "site evaluation" are defined in G.S. § 106-802(4). When a statute uses a term but does not specifically define that term, the term's common definition applies. "Sited" is the past tense of the transitive verb "site." The verb "site" means to provide with a site or to locate. The Act thus applies to operations located on or after October 1, 1995. The word "operation" is not defined in the Act. Read in context, operation means the raising of swine and the related use of swine houses, lagoons and sprayfields. Swine houses, lagoons or sprayfields in existence on October 1, 1995 are not unlawful as they stand even if they are inside the setbacks.

When a statute provides for an exception, that exception must be strictly construed. The siting date provides one exception to the Act's requirements. Whether an operation is sited after October 1, 1995, will have to be determined on a case by case basis, and the owner bears the burden of proof. If construction on the lagoon, swine house or sprayfield had not been completed on site by October 1, 1995, the owner will have to comply with the Act's location requirements except as noted below.

In some cases, an owner may have had a site evaluation done before initiating construction, and construction may not be completed until after October 1, 1995. The Act defines "siting" as equivalent to "site evaluation." A swine farm, lagoon or spray field that had a site evaluation could therefore be considered "sited" on the day that the site evaluation is completed. Such a site evaluation includes an "investigation to determine if a site meets all federal and State standards" and is not a cursory review. The Act became a State standard on the date of its passage since it applies statewide. To determine whether a site complies with the Act, the technical specialist would stake the corners and measure the setback distances for any lagoons, swine houses or sprayfields. It is our opinion that where an owner can show that a technical specialist completed a site evaluation before October 1, 1995 and the Division of Environmental Management certified that the facility is permitted under 15A NCAC 2H .0217; then that facility may be considered "sited" on the date the site evaluation was completed.

The second concern raised is based upon the potential conflict between the Act and the statutes and rules providing for protection of water quality. Mr. Botts' letter of January 4, 1996 referred to this situation as "retrofitting." The rules governing the permitting of animal waste management systems require some older swine farms to increase the treatment capacity of their associated lagoons or sprayfields. In some cases, an owner must expand the size of his lagoon or sprayfield to dispose of waste generated by existing swine houses without violating water quality statutes and rules. In some of those cases, the owner may have no choice but to enlarge an existing lagoon or sprayfield into the setback area. The Act's purpose is stated to be promoting economic development and minimizing interference with neighbors' property rights. The "retrofitting" described in Mr. Botts' letter advances these interests, because it provides greater treatment capacity for the same waste produced. Preventing a landowner from complying with animal waste management rules based upon this setback law creates the potential conflict that Mr. Botts described. Interpretations of acts in apparent conflict must be reconciled so as to give effect to each, where possible. It is our opinion that an owner of swine houses sited before October 1, 1995, may expand existing lagoons or sprayfields as needed to treat the waste generated by those houses according to the rules. What is required is that the owner show that a swine house was sited before October 1, 1995, and that the enlargement of a lagoon or spray field is necessary for that swine house's discharge to be permitted under 15A NCAC 2H .0217. Indeed, the Act provides additional support for this interpretation by noting that renovation and reconstruction do not make a farm a "new" swine farm.

The provision on renovation and reconstruction does not apply to the addition of new swine houses. Renovate means to restore to a former state or to make new again. Reconstruct means to rebuild. Neither of these terms is synonymous with expansion, enlargement or addition. It is our opinion that an owner may reconstruct or renovate a swine house, lagoon or sprayfield that was sited before October 1, 1995 without the reconstruction or renovation having to comply with the Act. If the owner is expanding or adding swine houses, lagoons or sprayfields, the Act applies to the expansions or additions, because the expansions are operations which were sited after October 1, 1995. If the expansions or additions are to the lagoons or sprayfields the owner may be able to show the conflict with water quality rules and statutes mentioned previously. Adding more swine houses cannot be fairly characterized as minimizing interference with the use and enjoyment of adjoining property, and expansion does not raise the conflict with the water quality rules previously noted. Expansion or addition of swine house operations after October 1, 1995 requires compliance with both the water quality rules and the Act. The same holds true for expanded lagoons or sprayfields needed to accommodate the increased waste associated with new swine houses.

Lastly, it has been noted that a sponsor of this legislation has expressed that he intended the Act to allow for expansion on existing farms, including adding new lagoons, sprayfields and swine houses. Our Supreme Court has consistently held that a statute's purpose is to be gleaned from the statute's words and not from the statute's sponsor.

We trust this answer has been responsive to your inquiries.

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