

[328] September 22, 1997

Mr. Preston Howard, Director Division of Water Quality Department of Environment and Natural Resources P. O. Box 27687 Raleigh, North Carolina 27611-7687

Re: Advisory Opinion; Moratorium on Construction or Expansion of Swine Farms; (S.L. 1997, C. 458)

Dear Mr. Howard:

The 1997 Session of the General Assembly, on August 26, 1997, ratified "An Act to Enact the Clean Water Responsibility and Environmentally Sound Policy Act, A Comprehensive and Balanced Program to Protect Water Quality, Public Health, and the Environment." Governor James B. Hunt, Jr., approved the Act on August 27, 1997, at 1:45 p.m. The Act, inter alia, places a moratorium on the construction or expansion of swine farms for a period of two (2) years unless certain exceptions are met. (S.L. 1997, c. 458, s. 1.1) One of these exceptions reads as follows:

"(b) Exceptions. -- The moratorium established by subsection (a) of this section does not prohibit: ...

(5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit for that construction or expansion under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.

The Division of Water Quality issued two (2) Certificates of Coverage under the swine waste operation general permit, on the morning of August 27, 1997. You have requested the opinion of this office as to the effectiveness of these certificates of coverage, in light of the swine farm moratorium.

It is our opinion the swine waste operation general permit and the certificates of coverage issued on the morning of August 27, 1997, are effective, and construction or expansion thereunder may proceed as a statutory exception to the swine farm moratorium.

Effective January 1, 1997, bills passed by the General Assembly are subject to a gubernatorial veto. With certain exceptions not applicable to your inquiry, bills do not become law until they are signed by the Governor. See Constitution of North Carolina, Art. II, §22. The process for approval of bills is established at G.S. 120-29.1, which reads in pertinent part as follows:

"(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved ____m. this ____ day of ____ and shall sign the same as follows: ' _____ Governor'."

The time of the Governor's signature on the Act in question sets its effective date, and any validly issued permit which precedes that time provides a statutory exception for the construction or expansion of a swine farm.

We trust this has been responsive to your question. If you feel you need further guidance, please feel free to contact us again.

Andrew A. Vanore, Jr. Chief Deputy

Daniel C. Oakley Senior Deputy Attorney General