

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

SESSION LAW 1998-188

HOUSE BILL 1480

AN ACT TO PROVIDE FOR THE REGISTRATION OF SWINE OPERATION INTEGRATORS BY SWINE GROWERS, TO EXTEND BY SIX MONTHS THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS AND ON LAGOONS AND ANIMAL WASTE MANAGEMENT SYSTEMS FOR SWINE FARMS, AND TO CLARIFY EXCEPTIONS TO THE STATEWIDE MORATORIUM.

The General Assembly of North Carolina enacts:

Section 1. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143- 215.10H. Swine integrator registration.

(a) *Definitions. - - As used in this section:*

(1) *'Grower' means a person who holds a permit for an animal waste management system under this Part or Part 1 of this Article for a swine farm, or who operates a swine farm that is subject to an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143- 215.10F.*

(2) *'Swine farm' has the same meaning as in G.S. 106- 802.*

(3) *'Swine operation integrator' or 'integrator' means a person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the animals. An ownership interest includes a right or option to purchase the animals.*

(b) *Registration Required.* - - As part of an operations review conducted pursuant to G.S. 143- 215.10D or an inspection conducted pursuant to G.S. 143- 215.10F, the Department shall require a grower to register any swine operation integrator with which the grower has a contractual relationship to raise swine. The registration shall be in writing and shall include only:

(1) The name of the owner of the swine farm.

(2) The mailing address of the owner of the swine farm.

(3) The physical location of the swine farm.

(4) The swine farm facility number.

(5) A description of the animal waste management system for the swine farm.

(6) The name and address of the grower, if different from the owner of the swine farm.

(7) The name and mailing address of the integrator.

(c) *Notice of Termination or New Relationship.* - - If the swine operation integrator removes all animals from a swine farm or terminates the integrator's relationship with the swine farm, the grower shall notify the Department of the termination or removal within 30 days. If the grower terminates the grower's relationship with the integrator or enters into a relationship with a different integrator, the grower shall notify the Department of the termination or new relationship within 30 days.

(d) *Disclosure of Violations.* - - The Department shall notify a swine operation integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with the Department. A notice of deficiency or violation of any law or rule governing an animal waste management system is a public record within the meaning of G.S. 132- 1 and is subject to disclosure as provided in Chapter 132 of the General Statutes."

Section 2. Section 1.1 of S.L. 1997- 458 reads as rewritten:

"Section 1.1. (a) *Moratorium Established.* - - As used in

this
~~section, `swine section:~~

(1) `Swine farm' and `lagoon' have the same meaning as in G.S. 106- 802. ~~As used in this section, `animal~~

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

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

(b) Exceptions. - - The moratorium established by subsection

~~(a)~~ (a1) of this section does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an

existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) ~~or (7)~~ (7), or (8) of this subsection.

(3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.

(4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(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.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:

a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.

b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.

c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or animal waste management system and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an ~~innovative~~ animal waste management system that does not employ an anaerobic lagoon ~~and that has been approved by the Department of Environment, Health, and Natural Resources. as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-~~ subdivisions a. through e. of this subdivision, and is designed to be the subject of a research project. The Environmental Management Commission shall issue a permit for the construction or expansion of an animal waste management system under

this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that additional research is necessary to evaluate whether the animal waste treatment system will:

a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.

b. Substantially eliminate atmospheric emissions of ammonia.

c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.

d. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.

e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

(8) Construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment and does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of subdivisions a. through e. of this subdivision. The Environmental Management Commission may issue permits under this subdivision only in a manner consistent with G.S. 143- 215.1(b)(2). The Commission shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the swine farm for at least a year, that the animal waste management system has been evaluated for at least a year, and that sufficient data exists to establish that the animal waste management system will:

a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.

b. Substantially eliminate atmospheric emissions of ammonia.

c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.

d. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.

e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

(c) Establishing Eligibility for an Exemption. - - It shall be the responsibility of an applicant for a permit for an animal waste management system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through ~~(7)~~ (8) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant.

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

Section 3. Section 1.2 of S.L. 1997- 458 reads as rewritten:

"Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106- 802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143- 215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under

Parts

1 or 1A of Chapter 143 of the General Statutes in any county in the State:

(i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103.

Effective 1 January 1997, until ~~1 March 1999~~, 1 September 1999, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective ~~1 March 1999~~, 1 September 1999, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

Section 4. Section 1 of this act becomes effective 1 January 1999. All other sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 12th day of October, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:22 a.m. this 16th day of October, 1998