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SESSION 1997

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HOUSE BILL 515
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Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED
AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

**"ARTICLE 67.
"SWINE FARMS.**

"§ 106-800. Title.

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds steady state live weight.
- (1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.
- (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.
- (3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.
- (3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.
- (4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

- (5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.
- (6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

- (1) ~~at~~ At least 1,500 feet from any occupied residence;
- (2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, or outdoor recreational facility, or church;
- (3) At least 1,320 feet from any surface waters of the State;
- (4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;
- (5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight; and

1 (6) ~~at~~ At least 500 feet from any property boundary. ~~boundary or public or~~
2 private drinking water supply.

3 (a1) The outer perimeter of the land area onto which waste is applied from a lagoon
4 that is a component of a swine farm shall be at least 50 feet from any boundary of
5 property on which an occupied residence is located from any perennial stream or river,
6 other than an irrigation ditch or canal.

7 (a2) No component of a liquid animal waste management system for which a permit
8 is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than
9 a land application site, shall be constructed on land that is located within the 100-year
10 floodplain.

11 (b) A swine house or a lagoon that is a component of a swine farm may be located
12 closer to a residence, school, hospital, church, or a property boundary than is allowed
13 under subsection (a) of this section if written permission is given by the owner of the
14 property and recorded with the Register of Deeds.

15 **"§ 106-804. Enforcement.**

16 (a) Any person ~~owning~~ who owns property directly affected by the siting
17 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil
18 action against a swine farmer who has violated G.S. 106-803 and may seek any one or
19 more of the following:

20 (1) Injunctive relief.

21 (2) An order enforcing the siting requirements under G.S. 106-803.

22 (3) Damages caused by the violation.

23 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
24 the person ~~owns~~ owns a facility or property located within the siting requirements
25 specified under G.S. 106-803.

26 (1) ~~An occupied residence located less than 1,500 feet from a swine house~~
27 ~~or lagoon in violation of G.S. 106-803.~~

28 (2) ~~A school, hospital, or church located less than 2,500 feet from a swine~~
29 ~~house or lagoon in violation of G.S. 106-803.~~

30 (3) ~~Property whose boundary is located less than 500 feet from a swine~~
31 ~~house or lagoon in violation of G.S. 106-803.~~

32 (4) ~~Property on which an occupied residence is located and whose boundary~~
33 ~~is less than 50 feet from the outer perimeter of the land area onto which~~
34 ~~waste is applied from a lagoon that is a component of a swine farm in~~
35 ~~violation of G.S. 106-803.~~

36 (5) ~~Property that abuts a perennial stream or river, or on which a perennial~~
37 ~~stream or river is located, and that property and that perennial stream or~~
38 ~~river are less than 50 feet from the outer perimeter of the land area onto~~
39 ~~which waste is applied from a lagoon that is a component of a swine~~
40 ~~farm in violation of G.S. 106-803.~~

41 (c) If the court determines it is appropriate, the court may award court costs,
42 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
43 temporary restraining order or preliminary injunction is sought, the court may require the

1 filing of a bond or equivalent security. The court shall determine the amount of the bond
2 or security.

3 (d) Nothing in this section shall restrict any other right that any person may have
4 under any statute or common law to seek injunctive or other relief.

5 **"§ 106-805. Written notice of swine farms.**

6 Any person who intends to construct a swine farm whose animal waste management
7 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General
8 Statutes shall, after completing a site evaluation and before the farm site is modified,
9 ~~attempt to notify all adjoining property owners and owners,~~ all property owners who own
10 property located across a public road, street, or highway from the swine ~~farm~~ farm, the
11 county or counties in which the farm site is located, and the local health departments of
12 that person's intent to construct the swine farm. This notice shall be by certified mail sent
13 to the address on record at the property tax office in the county in which the land is
14 located. located, except that the notice to a county shall be to the county manager or the
15 chairman if there is no county manager and the notice to a local health department shall
16 be to the local health director. The written notice shall include all of the following:

- 17 (1) The name and address of the person intending to construct a swine farm.
18 (2) The type of swine farm and the design capacity of the animal waste
19 management system.
20 (3) The name and address of the technical specialist preparing the waste
21 management plan.
22 (4) The address of the local Soil and Water Conservation District office.
23 (5) Information informing the adjoining property owners and the property
24 owners who own property located across a public road, street, or
25 highway from the swine farm that they may submit written comments to
26 the Division of Water Quality, Department of Environment, Health, and
27 Natural Resources.

28 Prior to issuance of a permit for an intensive animal feeding operation, the Environmental
29 Management Commission may hold a public hearing if it finds, upon its own initiative or
30 in response to a request from a member of the public, that there is a significant public
31 interest in holding the hearing. The notice and conduct of the hearing shall be in
32 accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3)."

33 Section 2.1. G.S. 143-215.107(a) is amended by adding a new subdivision to
34 read:

35 "(11) To develop and adopt standards and plans necessary to implement
36 programs to control the emission of odors from animal operations, as
37 defined in G.S. 143-215.10B."

38 Section 3. G.S. 143-215(e) is repealed.

39 Section 4. G.S. 153A-340 reads as rewritten:

40 **"§ 153A-340. Grant of power.**

41 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
42 county may regulate and restrict the height, number of stories and size of buildings and
43 other structures, the percentage of lots that may be occupied, the size of yards, courts and

1 other open spaces, the density of population, and the location and use of buildings,
2 structures, and land for trade, industry, residence, or other purposes, and to provide
3 density credits or severable development rights for dedicated rights-of-way pursuant to
4 G.S. 136-66.10 or G.S. 136-66.11.

5 (b) These regulations may not affect bona fide farms, but any use of farm property
6 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the
7 production and activities relating or incidental to the production of crops, fruits,
8 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms
9 of agricultural products having a domestic or foreign market. These regulations may
10 apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive
11 animal feeding operation is not a farm for the purpose of this Part.

12 (c) The regulations may provide that a board of adjustment may determine and
13 vary their application in harmony with their general purpose and intent and in accordance
14 with general or specific rules therein contained. The regulations may also provide that
15 the board of adjustment or the board of commissioners may issue special use permits or
16 conditional use permits in the classes of cases or situations and in accordance with the
17 principles, conditions, safeguards, and procedures specified therein and may impose
18 reasonable and appropriate conditions and safeguards upon these permits. Where
19 appropriate, the conditions may include requirements that street and utility rights-of-way
20 be dedicated to the public and that recreational space be provided. When issuing or
21 denying special use permits or conditional use permits, the board of commissioners shall
22 follow the procedures for boards of adjustment except that no vote greater than a majority
23 vote shall be required for the board of commissioners to issue such permits, and every
24 such decision of the board of commissioners shall be subject to review by the superior
25 court by proceedings in the nature of certiorari.

26 (d) A county may regulate the development over estuarine waters and over lands
27 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
28 bounds of that county.

29 (e) For the purpose of this section, the term 'structures' shall include floating
30 homes.

31 (f) Any petition for review by the superior court shall be filed with the clerk of
32 superior court within 30 days after the decision of the board of commissioners is filed in
33 such office as the ordinance specifies, or after a written copy thereof is delivered to every
34 aggrieved party who has filed a written request for such copy with the clerk at the time of
35 the hearing of the case, whichever is later. The decision of the board of commissioners
36 may be delivered to the aggrieved party either by personal service or by registered mail
37 or certified mail return receipt requested."

38 Section 5. A zoning regulation applicable to intensive animal feeding
39 operations adopted by a board of county commissioners prior to the date Section 4 of this
40 act becomes effective is hereby retroactively validated.

41 Section 6. There is established a temporary moratorium for any new or
42 expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter
43 143 of the General Statutes for any area in the State that: (i) has a county population of

1 less than 75,000 according to the most recent decennial federal census; (ii) has over one
2 hundred fifty million dollars (\$150,000,000) on expenditures for travel and tourism based
3 on the most recent figures of the Department of Commerce; and (iii) is not in the coastal
4 area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a
5 one-year period beginning on the date this act becomes effective, the Environmental
6 Management Commission shall not issue a permit for an animal waste management
7 system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon,
8 as defined in G.S. 106-802.

9 Section 7. There is established a one-year moratorium on the construction or
10 expansion of swine farms and lagoons. The Environmental Management Commission
11 shall not issue a permit for an animal waste management system, as defined in G.S. 143-
12 215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a
13 one-year period beginning on the date this act becomes effective except as provided by
14 this section. This section prohibits the construction or expansion of an animal waste
15 management system for a swine farm for one year from the date this act becomes
16 effective regardless of the date on which a site evaluation for the swine farm is completed
17 and regardless of whether the animal waste management system is permitted under Part
18 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A
19 North Carolina Administrative Code 2H.0217 but does not prohibit:

- 20 (1) Construction to repair a component of an existing swine farm or lagoon.
- 21 (2) Construction to replace a component of an existing swine farm or
22 lagoon if the replacement does not result in an increase in swine
23 population, except as provided in subdivision (4) of this section.
- 24 (3) Construction or expansion of a component or components of a swine
25 farm or lagoon, if actual construction began prior to March 1, 1997, or if
26 the owner of the swine farm entered into a bona fide contract to build
27 the component or components prior to March 1, 1997. For purposes of
28 this subdivision, "actual construction" is limited to the component or
29 components of a swine farm or lagoon for which the foundation has
30 been laid prior to March 1, 1997, from a blueprint drawing.
- 31 (4) Construction or expansion on or after the date this act becomes law for
32 the purpose of increasing the swine population to the projected
33 population or to the population that the animal waste management
34 system serving that swine farm is designed to accommodate, as set forth
35 in a registration of the swine operation filed with the Department of
36 Environment, Health, and Natural Resources before the date this act
37 becomes law.
- 38 (5) Construction or expansion on or after the date this act becomes law for
39 the purpose of complying with applicable animal waste management
40 rules and not for the purpose of increasing the swine population.
- 41 (6) Construction or expansion, if the person undertaking the construction or
42 expansion of the swine farm, lagoon, or animal waste management
43 system has, prior to the effective date of this section, been approved for

1 a loan or line of credit from a lending institution to finance the
2 construction or expansion and has obligated or expended funds derived
3 from the loan or line of credit.

- 4 (7) Construction or expansion of an innovative animal waste system
5 approved by the Department.

6 Section 8. (a) Except as provided in subsection (b) of this section, Section 2 of
7 this act is effective when it becomes law and applies to the construction or enlargement,
8 on or after the effective date of this act, of swine houses, lagoons, and land areas onto
9 which waste is applied from a lagoon that are components of a swine farm. Section 2 of
10 this act does not apply under each of the following circumstances when the construction
11 or enlargement occurs on or after the effective date of this act:

- 12 (1) For the purpose of increasing the swine population to that set forth as
13 the projected population in a registration of the swine operation filed
14 with the Department of Environment, Health, and Natural Resources
15 prior to the effective date of this act.

- 16 (2) For the purpose of increasing the swine population to the population
17 that the animal waste management system is designed to accommodate
18 as that system is set forth in a registration of the swine operation filed
19 with the Department of Environment, Health, and Natural Resources, or
20 an animal waste management plan approved prior to the effective date
21 of this act.

- 22 (3) For the purpose of complying with applicable animal waste
23 management rules and not for the purpose of increasing the swine
24 population.

25 (b) Section 1 and Sections 3 through 8 of this act are effective when this act
26 becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act
27 applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended
28 by Section 2 of this act, apply to any intensive animal feeding operation for which
29 construction began on or after 1 January 1997, regardless of the date on which the site
30 evaluation was completed.

31 (c) Section 2.1 of this act is effective when it becomes law. The Environmental
32 Management Commission shall publish the text of a proposed rule to regulate the
33 emission of odors from animal operations under G.S. 143-215.107(11), as enacted by
34 Section 2.1 of this act, within six months of the date on which the North Carolina
35 Agricultural Research Service at North Carolina State University issues its final report on
36 economically feasible odor control technologies as provided in Section 27.3 of Chapter
37 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than
38 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate
39 the emission of odors from animal waste management systems within one year of the date
40 the Commission publishes the text of a proposed rule as required by this subsection and
41 in any event, not later than 1 May 1999. The Board of Governors of The University of
42 North Carolina shall present its final report and recommendations on economically

- 1 feasible odor control technologies to the Environmental Review Commission and the
- 2 Environmental Management Commission not later than 1 November 1997.