

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 194\*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97

House Committee Substitute Favorable 7/28/97

Short Title: Amend Env. Laws.

(Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED  
AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.  
The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

**"§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- 1 (1) Is conducting or has conducted any activity causing significant  
2 environmental damage for which a major development permit is  
3 required under this Article without having previously obtained such  
4 permit or has received a notice of violation with respect to any activity  
5 governed by this Article and has not complied with the notice within the  
6 time specified in the notice;
- 7 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local  
8 ordinance adopted pursuant to this Article, or Article 17 of Chapter 113  
9 of the General Statutes which is due and for which no appeal is pending;
- 10 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S.  
11 113-229(k), or any criminal provision of a local ordinance adopted  
12 pursuant to this Article; or
- 13 (4) Has failed to substantially comply with ~~State~~state rules or local  
14 ordinances and regulations adopted pursuant to this Article or with other  
15 federal and ~~State~~state laws, regulations, and rules for the protection of  
16 the environment."

17 Section 3. G.S. 143-215.1(c) reads as rewritten:

18 "(c) Applications for Permits and Renewals for Facilities Discharging to the  
19 Surface Waters. –

- 20 (1) All applications for permits and for renewal of existing permits for  
21 outlets and point sources and for treatment works and disposal systems  
22 discharging to the surface waters of the State shall be in writing, and the  
23 Commission may prescribe the form of such applications. All  
24 applications shall be filed with the Commission at least 180 days in  
25 advance of the date on which it is desired to commence the discharge of  
26 wastes or the date on which an existing permit expires, as the case may  
27 be. The Commission shall act on a permit application as quickly as  
28 possible. The Commission may conduct any inquiry or investigation it  
29 considers necessary before acting on an application and may require an  
30 applicant to submit plans, specifications, and other information the  
31 Commission considers necessary to evaluate the application.
- 32 (2) a. The Department shall refer each application for permit, or renewal of  
33 an existing permit, for outlets and point sources and treatment works  
34 and disposal systems discharging to the surface waters of the State to its  
35 staff for written evaluation and proposed determination with regard to  
36 issuance or denial of the permit. If the Commission concurs in the  
37 proposed determination, it shall give notice of intent to issue or deny the  
38 permit, along with any other data that the Commission may determine  
39 appropriate, to be given to the appropriate State, interstate and federal  
40 agencies, to interested persons, and to the public.  
41 a1. The Commission shall prescribe the form and content of the  
42 notice. ~~The notice required herein~~Public notice shall be given at  
43 least 45 days prior to any proposed final action granting or

1 denying the permit. Public notice shall be given by publication  
2 of the notice one time in a newspaper having general circulation  
3 within the county.

4 b. Repealed by Session Laws 1987, c. 734.

- 5 (3) If any person desires a public ~~meeting~~-hearing on any application for  
6 permit or renewal of an existing permit provided for in this subsection,  
7 he shall so request in writing to the Commission within 30 days  
8 following date of the notice of intent. The Commission shall consider  
9 all such requests for ~~meeting~~, hearing, and if the Commission determines  
10 that there is a significant public interest in holding such ~~meeting~~,  
11 hearing, at least 30 days' notice of such ~~meeting~~-hearing shall be given to  
12 all persons to whom notice of intent was sent and to any other person  
13 requesting notice. At least 30 days prior to the date of ~~meeting~~-hearing,  
14 the Commission shall also cause a copy of the notice thereof to be  
15 published at least one time in a newspaper having general circulation in  
16 such county. In any county in which there is more than one newspaper  
17 having general circulation in that county, the Commission shall cause a  
18 copy of such notice to be published in as many newspapers having  
19 general circulation in the county as the Commission in its discretion  
20 determines may be necessary to assure that such notice is generally  
21 available throughout the county. The Commission shall prescribe the  
22 form and content of the notices.

23 The Commission shall prescribe the procedures to be followed in  
24 ~~such meetings~~-hearings. If the ~~meeting~~-hearing is not conducted by the  
25 Commission, detailed minutes of the ~~meeting~~-hearing shall be kept and  
26 shall be submitted, along with any other written comments, exhibits or  
27 documents presented at the ~~meeting~~-hearing, to the Commission for its  
28 consideration prior to final action granting or denying the permit.

- 29 (4) Not later than 60 days following notice of intent or, if a public hearing is  
30 held, within 90 days following consideration of the matters and things  
31 presented at such hearing, the Commission shall grant or deny any  
32 application for issuance of a new permit or for renewal of an existing  
33 permit. All permits or renewals issued by the Commission and all  
34 decisions denying application for permit or renewal shall be in writing.
- 35 (5) No permit issued pursuant to this subsection (c) shall be issued or  
36 renewed for a term exceeding five years.
- 37 (6) The Commission shall not act upon an application for a new  
38 nonmunicipal domestic wastewater discharge facility until it has  
39 received a written statement from each city and county government  
40 having jurisdiction over any part of the lands on which the proposed  
41 facility and its appurtenances are to be located which states whether the  
42 city or county has in effect a zoning or subdivision ordinance and, if  
43 such an ordinance is in effect, whether the proposed facility is consistent

1 with the ordinance. The Commission shall not approve a permit  
2 application for any facility which a city or county has determined to be  
3 inconsistent with its zoning or subdivision ordinance unless it  
4 determines that the approval of such application has statewide  
5 significance and is in the best interest of the State. An applicant for a  
6 permit shall request that each city and county government having  
7 jurisdiction issue the statement required by this subdivision by mailing  
8 by certified mail, return receipt requested, a written request for such  
9 statement and a copy of the draft permit application to the clerk of the  
10 city or county. If a local government fails to mail the statement required  
11 by this subdivision, as evidenced by a postmark, within 15 days after  
12 receiving and signing for the certified mail, the Commission may  
13 proceed to consider the permit application notwithstanding this  
14 subdivision."

15 Section 4. G.S. 143-215.4(b) reads as rewritten:

16 "(b) Procedures for Public Input. –

- 17 (1) The Commission may, on its own motion or when required by federal  
18 law, request public comments on or hold public hearings on matters  
19 within the scope of its authority under this Article or Articles 21A or  
20 21B of this Chapter. To request public comments on a matter, the  
21 Commission shall notify appropriate agencies of the opportunity to  
22 submit written comments to the Commission on the matter and shall  
23 publish a notice in a newspaper having general circulation in the  
24 affected area, stating the matter under consideration by the Commission  
25 and informing the public of its opportunity to submit written comments  
26 to the Commission on the matter. A public comment period shall extend  
27 for at least 30 days after the notice is published.
- 28 (2) To hold a public hearing on a matter, the Commission shall notify, by  
29 personal service or certified mail, persons directly affected by the matter  
30 under consideration and shall publish a notice in a newspaper having  
31 general circulation in the affected area, stating the matter under  
32 consideration by the Commission and the time, date, and place of a  
33 public hearing to be held on the matter. A public hearing shall be held  
34 no sooner than 20 days after the notice is published. The proceedings at  
35 a public hearing held under this subsection shall be recorded. Upon  
36 payment of a fee established by the Commission, any person may obtain  
37 a copy of the record of the public hearing. After a public hearing, the  
38 Commission shall accept written comments for the time period  
39 prescribed by the Commission.
- 40 (3) This subsection does not apply to rule-making proceedings, contested  
41 case hearings, or the issuance of permits required under Title V. The  
42 Commission shall establish procedures for public hearings, public

1 notice, and public comment respecting permits required by Title V as  
2 provided by G.S. 143-215.111(4).

- 3 (4) The Commission may hold a public meeting on any matter within its  
4 scope of authority. The Commission may hold a public meeting in  
5 addition to any public hearing that is required under any provision of  
6 law, but a public meeting may not be substituted for any required public  
7 hearing. Except as may be otherwise provided by law, the Commission  
8 may determine the procedures for any public meeting it holds."

9 Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

- 10 "(4) To delegate such of the powers of the Commission as the Commission  
11 deems necessary to one or more of its members, to the Secretary or any  
12 other qualified employee of the Department. ~~Department; provided, that~~  
13 ~~the provisions of any such delegation of power shall be set forth in the rules of~~  
14 ~~the Commission; and provided further that the~~ The Commission shall not  
15 delegate to persons other than its own members and the designated  
16 employees of the Department the power to conduct hearings with  
17 respect to the classification of waters, the assignment of classifications,  
18 air quality standards, air contaminant source classifications, emission  
19 control standards, or the issuance of any special order except in the case  
20 of an emergency under subdivision (12) of this subsection for the  
21 abatement of existing water or air pollution. Any employee of the  
22 Department to whom a delegation of power is made to conduct a  
23 hearing shall report the hearing with its evidence and record to the  
24 Commission."

25 Section 6. Reserved.

26 Section 7. G.S. 143B-291 reads as rewritten:

27 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;**  
28 **compensation; quorum; services.**

29 (a) Members, Selection. – The North Carolina Mining Commission shall consist of  
30 nine members appointed by the ~~Governor. The Commission shall be composed of the~~  
31 ~~following: one~~ Governor under a specified subdivision of this subsection as follows:

- 32 (1) One member who is the chairman of the North Carolina State University  
33 Minerals Research Laboratory Advisory Committee, ex officio.  
34 ~~Committee; three representatives of mining industries; three representatives of~~  
35 ~~nongovernmental conservation interests and two who shall represent the~~  
36 ~~Environmental Management Commission and be knowledgeable in the~~  
37 ~~principles of water and air resources management.~~  
38 (2) One member who is a representative of the mining industry.  
39 (3) One member who is a representative of the mining industry.  
40 (4) One member who is a representative of the mining industry.  
41 (5) One member who is a representative of nongovernmental conservation  
42 interests.

- 1           (6) One member who is a representative of nongovernmental conservation  
2           interests.
- 3           (7) One member who is a representative of nongovernmental conservation  
4           interests.
- 5           (8) One who, at the time of the appointment to the Mining Commission, is  
6           a member of the Environmental Management Commission and  
7           knowledgeable in the principles of water and air resources management.
- 8           (9) One who, at the time of the appointment to the Mining Commission, is  
9           a member of the Environmental Management Commission and  
10          knowledgeable in the principles of water and air resources management.

11  ~~- The initial members of the North Carolina Mining Commission shall be those~~  
12  ~~members of the present North Carolina Mining Council who shall meet the above~~  
13  ~~requirements for membership on the North Carolina Mining Commission and who shall~~  
14  ~~serve on the North Carolina Mining Commission for a period equal to the remainder of~~  
15  ~~their current terms on the North Carolina Mining Council. The remaining initial~~  
16  ~~members shall be appointed by the Governor to staggered terms of six years.~~

17       (b) Terms. – The term of office of a member of the Commission is six years. Any  
18 appointment to fill a vacancy on the Commission created by the resignation, dismissal,  
19 death or disability of a member shall be for the balance of the unexpired term.–At the  
20 expiration of each member's term, the Governor shall replace the member with a new  
21 member of like qualifications for a term of six years. The term of members appointed  
22 under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30  
23 June of years that precede by one year those years that are evenly divisible by six. The  
24 term of members appointed under subdivisions (3) and (6) of subsection (a) of this  
25 section shall expire on 30 June of years that follow by one year those years that are  
26 evenly divisible by six. The term of members appointed under subdivisions (4), (7), and  
27 (9) of subsection (a) of this section shall expire on 30 June of years that follow by three  
28 years those years that are evenly divisible by six. Upon the expiration of a six-year term,  
29 a member may continue to serve until a successor is appointed and duly qualified as  
30 provided by G.S. 128-7.

31       (c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired  
32 balance of the term.

33       (d) Removal. – ~~The Governor shall have the power to~~ may ~~remove any member of~~  
34 ~~the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance~~  
35 ~~with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.~~ G.S. 143B-  
36 13.

37       (e) Compensation. – The members of the Commission shall receive per diem and  
38 necessary traveling and subsistence expenses in accordance with the provisions of G.S.  
39 138-5.

40       (f) Quorum. – A majority of the Commission shall constitute a quorum for the  
41 transaction of business.

42       (g) Staff. – All clerical and other services required by the Commission shall be  
43 supplied by the Secretary of the Department."

1 Section 8. In order to reestablish a schedule of six-year staggered terms for the  
2 Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act,  
3 the Governor, in making appointments to replace the two members of the Mining  
4 Commission who represent the mining industry and whose terms both expire on 30 June  
5 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term  
6 expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a  
7 four-year term expiring 30 June 2001.

8 Section 9. G.S. 143B-313.2 reads as rewritten:

9 **"§ 143B-313.2. North Carolina Parks and Recreation Authority; members;  
10 selection; compensation; meetings.**

11 (a) Membership. – The North Carolina Parks and Recreation Authority shall  
12 consist of 11 members. The members shall include persons who are knowledgeable about  
13 park and recreation issues in North Carolina or with expertise in finance. ~~Three members~~  
14 ~~shall be appointed by the Governor, four members shall be appointed by the General Assembly~~  
15 ~~upon the recommendation of the Speaker of the House of Representatives in accordance with~~  
16 ~~G.S. 120-121, and four members shall be appointed by the General Assembly upon the~~  
17 ~~recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.~~  
18 ~~The members shall serve at the pleasure of the appointing authority. The Governor shall appoint~~  
19 ~~one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies~~  
20 ~~shall be appointed by the original appointing authority, and the term shall be for the balance of~~  
21 ~~the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and~~  
22 ~~place as designated by the Chair, but no less frequently than quarterly. In making~~  
23 ~~appointments, each appointing authority shall specify under which subdivision of this~~  
24 ~~subsection the person is appointed. Members shall be appointed as follows:~~

25 (1) One member appointed by the Governor.

26 (2) One member appointed by the Governor.

27 (3) One member appointed by the Governor.

28 (4) One member appointed by the General Assembly upon the  
29 recommendation of the Speaker of the House of Representatives, as  
30 provided in G.S. 120-121.

31 (5) One member appointed by the General Assembly upon the  
32 recommendation of the Speaker of the House of Representatives, as  
33 provided in G.S. 120-121.

34 (6) One member appointed by the General Assembly upon the  
35 recommendation of the Speaker of the House of Representatives, as  
36 provided in G.S. 120-121.

37 (7) One member appointed by the General Assembly upon the  
38 recommendation of the Speaker of the House of Representatives, as  
39 provided in G.S. 120-121.

40 (8) One member appointed by the General Assembly upon the  
41 recommendation of the President Pro Tempore of the Senate, as  
42 provided in G.S. 120-121.

1           (9) One member appointed by the General Assembly upon the  
2 recommendation of the President Pro Tempore of the Senate, as  
3 provided in G.S. 120-121.

4           (10) One member appointed by the General Assembly upon the  
5 recommendation of the President Pro Tempore of the Senate, as  
6 provided in G.S. 120-121.

7           (11) One member appointed by the General Assembly upon the  
8 recommendation of the President Pro Tempore of the Senate, as  
9 provided in G.S. 120-121.

10       (b) Terms. – Members shall serve two-year terms. Members shall serve no more  
11 than two full two-year terms. Upon the expiration of a two-year term, a member may  
12 continue to serve until a successor is appointed and duly qualified as provided by G.S.  
13 128-7. The term of members appointed under odd-numbered subdivisions of subsection  
14 (a) of this section shall expire on 30 June of odd-numbered years. The term of members  
15 appointed under even-numbered subdivisions of subsection (a) of this section shall expire  
16 on 30 June of even-numbered years.

17       (c) Chair. – The Governor shall appoint one member of the North Carolina Parks  
18 and Recreation Authority to serve as Chair.

19       (d) Vacancies. – A vacancy on the North Carolina Parks and Recreation Authority  
20 shall be filled by the appointing authority responsible for making the appointment to that  
21 position as provided in subsection (a) of this section. An appointment to fill a vacancy  
22 shall be for the unexpired balance of the term.

23       (e) Removal. – The Governor may remove, as provided in G.S. 143-13, any  
24 member of the North Carolina Parks and Recreation Authority appointed by the Governor  
25 for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any  
26 member of the North Carolina Parks and Recreation Authority appointed by the General  
27 Assembly for misfeasance, malfeasance, or nonfeasance.

28       ~~(e)~~ (f) Compensation. – The members of the North Carolina Parks and Recreation  
29 Authority shall receive per diem and necessary travel and subsistence expenses according  
30 to the provisions of G.S. 138-5.

31       (g) Meetings. – The North Carolina Parks and Recreation Authority shall meet at  
32 least quarterly at a time and place designated by the Chair.

33       ~~(d)~~ (h) Quorum. – A majority of the North Carolina Parks and Recreation  
34 Authority shall constitute a quorum for the transaction of business.

35       ~~(e)~~ (i) Staff. – All clerical and other services required by the North Carolina Parks  
36 and Recreation Authority shall be provided by the Secretary of Environment, Health, and  
37 Natural Resources."

38       Section 10. In order to reestablish a schedule of two-year staggered terms for  
39 the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as  
40 amended by Section 9 of this act:

41       (1) The Governor, in making appointments to replace the one member of  
42 the North Carolina Parks and Recreation Authority appointed by the  
43 Governor whose term expires on 30 June 1997, shall appoint a member



1 under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June  
2 1999.

3 (2) The Governor, in making appointments to replace the two members of  
4 the North Carolina Parks and Recreation Authority appointed by the  
5 Governor whose terms expire on 30 June 1998, shall appoint one  
6 member under G.S. 143B-313.2(a)(2) to a full two-year term expiring  
7 on 30 June 2000 and shall appoint one member under G.S. 143B-  
8 313.2(a)(3) to a one-year term expiring 30 June 1999.

9 (3) The General Assembly, in making appointments to replace the four  
10 members of the North Carolina Parks and Recreation Authority  
11 appointed by the General Assembly upon the recommendation of the  
12 Speaker of the House of Representatives whose terms expire on 30 June  
13 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S.  
14 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and  
15 shall appoint two members under G.S. 143B-313.2(a)(5) and G.S.  
16 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

17 (4) The General Assembly, in making appointments to replace the four  
18 members of the North Carolina Parks and Recreation Authority  
19 appointed by the General Assembly upon the recommendation of the  
20 President Pro Tempore of the Senate whose terms expire on 30 June  
21 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S.  
22 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and  
23 shall appoint two members under G.S. 143B-313.2(a)(9) and G.S.  
24 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

25 Section 11. Sections 11 through 18 of this act shall be known and may be cited  
26 as the "Environmentally Sound Policy Act of 1997 (ESP)".

27 Section 12. Article 67 of Chapter 106 of the General Statutes reads as  
28 rewritten:

29 **"ARTICLE 67.**  
30 **"SWINE FARMS.**

31 **"§ 106-800. Title.**

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

33 **"§ 106-801. Purpose.**

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

38 **"§ 106-802. Definitions.**

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

40 (1a) 'Intensive animal feeding operation' means a new or enlarged swine  
41 farm with a design capacity of more than 800,000 pounds steady state  
42 live weight.

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

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

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

23 **"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto**  
24 **which waste is applied at swine farms.**

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

- 27 (1) ~~at~~ At least 1,500 feet from any occupied residence;
- 28 (2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or  
29 forest, wildlife refuge, fragile or historic area, or outdoor recreational  
30 facility, or church;
- 31 (3) At least 1,320 feet from any surface waters of the State;
- 32 (4) At least 1,000 feet from any property boundary for any new or enlarged  
33 swine farm with a design capacity of at least 500,000 pounds steady  
34 state live weight;
- 35 (5) At least 1,500 feet from any property boundary for any new or enlarged  
36 swine farm with a design capacity of more than 1,000,000 pounds  
37 steady state live weight; and
- 38 (6) ~~at~~ At least 500 feet from any property boundary. boundary or public or  
39 private drinking water supply.

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

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

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

9 **"§ 106-804. Enforcement.**

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

14           (1) Injunctive relief.

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

16           (3) Damages caused by the violation.

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

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

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

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

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

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

35       (c) If the court determines it is appropriate, the court may award court costs,  
36 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a  
37 temporary restraining order or preliminary injunction is sought, the court may require the  
38 filing of a bond or equivalent security. The court shall determine the amount of the bond  
39 or security.

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

42 **"§ 106-805. Written notice of swine farms.**

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

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

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

28 Section 12.1. G.S. 143-215.107(a) is amended by adding a new subdivision to  
29 read:

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

33 Section 13. G.S. 143-215(e) is repealed.

34 Section 14. G.S. 153A-340 reads as rewritten:

35 **"§ 153A-340. Grant of power.**

36 (a) For the purpose of promoting health, safety, morals, or the general welfare, a  
37 county may regulate and restrict the height, number of stories and size of buildings and  
38 other structures, the percentage of lots that may be occupied, the size of yards, courts and  
39 other open spaces, the density of population, and the location and use of buildings,  
40 structures, and land for trade, industry, residence, or other purposes, and to provide  
41 density credits or severable development rights for dedicated rights-of-way pursuant to  
42 G.S. 136-66.10 or G.S. 136-66.11.

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

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

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

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

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

34 Section 15. A zoning regulation applicable to intensive animal feeding  
35 operations adopted by a board of county commissioners prior to the date Section 14 of  
36 this act becomes effective is hereby retroactively validated.

37 Section 16. There is established a temporary moratorium for any new or  
38 expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter  
39 143 of the General Statutes for any area in the State that: (i) has a county population of  
40 less than 75,000 according to the most recent decennial federal census; (ii) has over one  
41 hundred fifty million dollars (\$150,000,000) on expenditures for travel and tourism based  
42 on the most recent figures of the Department of Commerce; and (iii) is not in the coastal  
43 area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a

1 one-year period beginning on the date this act becomes effective, the Environmental  
2 Management Commission shall not issue a permit for an animal waste management  
3 system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon,  
4 as defined in G.S. 106-802.

5 Section 17. There is established a one-year moratorium on the construction or  
6 expansion of swine farms and lagoons. The Environmental Management Commission  
7 shall not issue a permit for an animal waste management system, as defined in G.S. 143-  
8 215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a  
9 one-year period beginning on the date this act becomes effective except as provided by  
10 this section. This section prohibits the construction or expansion of an animal waste  
11 management system for a swine farm for one year from the date this act becomes  
12 effective regardless of the date on which a site evaluation for the swine farm is completed  
13 and regardless of whether the animal waste management system is permitted under Part  
14 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A  
15 North Carolina Administrative Code 2H.0217 but does not prohibit:

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

1 (7) Construction or expansion of an innovative animal waste system  
2 approved by the Department.

3 Section 18. (a) Except as provided in subsection (b) of this section, Section 12  
4 of this act is effective when it becomes law and applies to the construction or  
5 enlargement, on or after the effective date of this act, of swine houses, lagoons, and land  
6 areas onto which waste is applied from a lagoon that are components of a swine farm.  
7 Section 12 of this act does not apply under each of the following circumstances when the  
8 construction or enlargement occurs on or after the effective date of this act:

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

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

19 (3) For the purpose of complying with applicable animal waste  
20 management rules and not for the purpose of increasing the swine  
21 population.

22 (b) Section 11 and Sections 13 through 18 of this act are effective when this act  
23 becomes law. Section 11, Sections 13 through 18, and the provisions of Section 12 of  
24 this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as  
25 amended by Section 12 of this act, apply to any intensive animal feeding operation for  
26 which construction began on or after 1 January 1997, regardless of the date on which the  
27 site evaluation was completed.

28 (c) Section 12.1 of this act is effective when it becomes law. The Environmental  
29 Management Commission shall publish the text of a proposed rule to regulate the  
30 emission of odors from animal operations under G.S. 143-215.107(11), as enacted by  
31 Section 12.1 of this act, within six months of the date on which the North Carolina  
32 Agricultural Research Service at North Carolina State University issues its final report on  
33 economically feasible odor control technologies as provided in Section 27.3 of Chapter  
34 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than  
35 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate  
36 the emission of odors from animal waste management systems within one year of the date  
37 the Commission publishes the text of a proposed rule as required by this subsection and  
38 in any event, not later than 1 May 1999. The Board of Governors of The University of  
39 North Carolina shall present its final report and recommendations on economically  
40 feasible odor control technologies to the Environmental Review Commission and the  
41 Environmental Management Commission not later than 1 November 1997.

42 (d) Sections 1 through 10 of this act are effective when they become law.