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HOUSE BILL 515

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Short Title: Clean Water Responsibility Act.

(Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT AND TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1. (a) Moratorium Established. – As used in this section, "swine farm"and "lagoon"have the same meaning as in G.S. 106-802. As used in this section,

1 "animal waste management system" has the same meaning as in G.S. 143-215.10B.  
2 There is hereby established a moratorium on the construction or expansion of swine  
3 farms and on lagoons and animal waste management systems for swine farms. The  
4 purposes of this moratorium are to allow counties time to adopt zoning ordinances under  
5 G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of  
6 the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and  
7 to allow the 1999 General Assembly to receive and act on the findings and  
8 recommendations of those studies. Except as provided in subsection (b) of this section,  
9 the Environmental Management Commission shall not issue a permit for an animal waste  
10 management system for a new swine farm or the expansion of an existing swine farm for  
11 a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or  
12 expansion of a swine farm or animal waste management system for a swine farm is  
13 prohibited during the period of the moratorium regardless of the date on which a site  
14 evaluation for the swine farm is completed and regardless of whether the animal waste  
15 management system is deemed permitted under 15A North Carolina Administrative Code  
16 2H.0217.

17 (b) Exceptions. – The moratorium established by subsection (a) of this section  
18 does not prohibit:

- 19 (1) Construction to repair a component of an existing swine farm or lagoon.
- 20 (2) Construction to replace a component of an existing swine farm or  
21 lagoon if the replacement does not result in an increase in swine  
22 population, except as provided in subdivision (3) or (7) of this section.
- 23 (3) Construction or expansion for the purpose of increasing the swine  
24 population to the projected population or to the population that the  
25 animal waste management system serving that swine farm is designed to  
26 accommodate, as set forth in a certified animal waste management plan  
27 filed with the Department of Environment, Health, and Natural  
28 Resources prior to 1 March 1997.
- 29 (4) Construction or expansion for the purpose of complying with applicable  
30 animal waste management rules and not for the purpose of increasing  
31 the swine population.
- 32 (5) Construction or expansion, if the person undertaking the construction or  
33 expansion of the swine farm, lagoon, or animal waste management  
34 system has been issued a permit under G.S. 143-215.1(a) or Part 1A of  
35 Article 21 of Chapter 143 of the General Statutes prior to the date this  
36 act becomes effective.
- 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 1 March 1997, either:
  - 40 a. Laid a foundation for a component of the swine farm, lagoon, or  
41 animal waste management system.

- 1 b. Entered into a bona fide written contract for the construction or  
2 expansion of the swine farm, lagoon, or animal waste  
3 management system.  
4 c. Been approved for a loan or line of credit to finance the  
5 construction or expansion of the swine farm, lagoon, or animal  
6 waste management system and has obligated or expended funds  
7 derived from the loan or line of credit.

- 8 (7) Construction or expansion of an innovative animal waste management  
9 system that does not employ an anaerobic lagoon and that has been  
10 approved by the Department of Environment, Health, and Natural  
11 Resources.

12 (c) Establishing Eligibility for an Exemption. – It shall be the responsibility of an  
13 applicant for a permit for an animal waste management system for a new swine farm or  
14 for the expansion of an existing swine farm under subdivisions (1) through (7) of  
15 subsection (b) of this section to provide information and documentation to the  
16 Department of Environment, Health, and Natural Resources that establishes, to the  
17 satisfaction of the Department, that the applicant is eligible for the permit. In  
18 demonstrating eligibility for a permit under this section, the burden of proof shall be on  
19 the applicant.  
20

## 21 PART II. AGRICULTURAL ZONING BY COUNTIES

22

23 Section 2.1. G.S. 153A-340 reads as rewritten:

### 24 "§ 153A-340. Grant of power.

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

- 32 (b) (1) These regulations may ~~not~~ affect property used for bona fide  
33 farms, but any farm purposes only as provided in subdivision (3) of  
34 this subsection. This subsection does not limit regulation under this  
35 Part with respect to the use of farm property for nonfarm purposes is  
36 subject to the regulations- purposes.

- 37 (2) Bona fide farm purposes include the production and activities relating or  
38 incidental to the production of crops, fruits, vegetables, ornamental and  
39 flowering plants, dairy, livestock, poultry, and all other forms of  
40 agricultural products having a domestic or foreign market.

- 41 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A  
42 county may adopt zoning regulations governing swine farms served by  
43 animal waste management systems having a design capacity of 600,000

1            pounds steady state live weight (SSLW) or greater provided that the  
2            zoning regulations may not have the effect of excluding swine farms  
3            served by an animal waste management system having a design capacity  
4            of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

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

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

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

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

31            Section 2.2. Zoning regulations governing swine farms served by animal  
32 waste management systems having a design capacity of 600,000 pounds steady state live  
33 weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1  
34 of this act, shall not, with respect to a swine farm in existence at the time the zoning  
35 ordinance is adopted:

- 36            (1) Prohibit the continued existence of the swine farm.
- 37            (2) Require the amortization of the swine farm.
- 38            (3) Prohibit the repair or replacement on the same site of the swine farm so  
39 long as the repair or replacement does not increase the swine population  
40 beyond the population that the animal waste management system  
41 serving the swine farm is designed to accommodate, as set forth in the  
42 permit for the animal waste management system.
- 43

1           **PART III.       CONTROL OF ODOR EMISSIONS FROM ANIMAL**  
2                           **OPERATIONS**

3  
4           Section 3.1. G.S. 143-215.107(a) is amended by adding a new subdivision to  
5 read:

6           "(11) To develop and adopt standards and plans necessary to implement  
7           programs to control the emission of odors from animal operations, as  
8           defined in G.S. 143-215.10B. Standards and plans adopted under this  
9           subdivision shall be required only to the extent that economically  
10           feasible technology sufficient to satisfy these standards and plans is  
11           available."

12           Section 3.2. The Board of Governors of The University of North Carolina  
13 shall present its final report and recommendations on economically feasible odor control  
14 technologies, as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996  
15 Second Extra Session), to the Environmental Review Commission and the Environmental  
16 Management Commission not later than 1 November 1997. The Environmental  
17 Management Commission shall publish the text of a proposed rule to regulate the  
18 emission of odors from animal operations under G.S. 143-215.107(a)(11), as enacted by  
19 Section 3.1 of this act, within six months after the date on which the North Carolina  
20 Agricultural Research Service at North Carolina State University issues its final report on  
21 economically feasible odor control technologies if the report establishes that  
22 economically feasible odor control technology for animal operations is available. If  
23 economically feasible odor control technology for animal operations is available, the  
24 Environmental Management Commission shall adopt a rule to regulate the emission of  
25 odors from animal waste management systems no later than 1 March 1999. The  
26 Environmental Management Commission shall not adopt a temporary rule to regulate the  
27 emission of odors from animal waste management systems. The Environmental  
28 Management Commission shall report on its progress in developing and adopting a rule  
29 to regulate the emission of odors from animal waste management systems as a part of  
30 each quarterly report the Environmental Management Commission makes to the  
31 Environmental Review Commission pursuant to G.S. 143B-282(b).

32  
33           **PART IV.       SWINE FARM SITING ACT AMENDMENTS**

34  
35           Section 4.1. Article 67 of Chapter 106 of the General Statutes reads as  
36 rewritten:

37                                   **"ARTICLE 67.**  
38                                   **"SWINE FARMS.**

39           **"§ 106-800. Title.**

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

41           **"§ 106-801. Purpose.**

42           The General Assembly finds that certain limitations on the siting of swine houses and  
43 lagoons for swine farms can assist in the development of pork production, which

1 contributes to the economic development of the State, by lessening the interference with  
2 the use and enjoyment of adjoining property.

3 **"§ 106-802. Definitions.**

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

- 5 (1) 'Lagoon' means a confined body of water to hold animal byproducts  
6 including bodily waste from animals or a mixture of waste with feed,  
7 bedding, litter or other agricultural materials.  
8 (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.  
9 (3) 'Occupied residence' means a dwelling actually inhabited by a person  
10 on a continuous basis as exemplified by a person living in his or her  
11 home.  
12 (4) 'Site evaluation' means an investigation to determine if a site meets all  
13 federal and State standards as evidenced by the Waste Management  
14 Facility Site Evaluation Report on file with the Soil and Water  
15 Conservation District office or a comparable report certified by a  
16 professional engineer or a comparable report certified by a technical  
17 specialist approved by the North Carolina Soil and Water Conservation  
18 Commission.

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

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

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

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

- 28 (1) ~~at~~ At least 1,500 feet from any occupied ~~residence;~~ residence.  
29 (2) ~~at~~ At least 2,500 feet from any school, hospital, or ~~church;~~ and church.  
30 (3) ~~at~~ At least 500 feet from any property boundary.

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

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

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

43 **"§ 106-804. Enforcement.**

1 (a) Any person ~~owning~~ who owns property directly affected by the siting  
2 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil  
3 action against ~~a swine farmer~~ the owner or operator of a swine farm who has violated G.S.  
4 106-803 and may seek any one or more of the following:

- 5 (1) Injunctive relief.
- 6 (2) An order enforcing the siting requirements under G.S. 106-803.
- 7 (3) Damages caused by the violation.

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

- 11 ~~(1) An occupied residence located less than 1,500 feet from a swine house~~  
12 ~~or lagoon in violation of G.S. 106-803.~~
- 13 ~~(2) A school, hospital, or church located less than 2,500 feet from a swine~~  
14 ~~house or lagoon in violation of G.S. 106-803.~~
- 15 ~~(3) Property whose boundary is located less than 500 feet from a swine~~  
16 ~~house or lagoon in violation of G.S. 106-803.~~
- 17 ~~(4) Property on which an occupied residence is located and whose boundary~~  
18 ~~is less than 50 feet from the outer perimeter of the land area onto which~~  
19 ~~waste is applied from a lagoon that is a component of a swine farm in~~  
20 ~~violation of G.S. 106-803.~~
- 21 ~~(5) Property that abuts a perennial stream or river, or on which a perennial~~  
22 ~~stream or river is located, and that property and that perennial stream or~~  
23 ~~river are less than 50 feet from the outer perimeter of the land area onto~~  
24 ~~which waste is applied from a lagoon that is a component of a swine~~  
25 ~~farm in violation of G.S. 106-803.~~

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

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

33 **"§ 106-805. Written notice of swine farms.**

34 Any person who intends to construct a swine farm whose animal waste management  
35 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General  
36 Statutes shall, after completing a site evaluation and before the farm site is modified,  
37 ~~attempt to notify all adjoining property owners and owners;~~ all property owners who own  
38 property located across a public road, street, or highway from the swine ~~farm~~ farm; the  
39 county or counties in which the farm site is located; and the local health department or  
40 departments having jurisdiction over the farm site of that person's intent to construct the  
41 swine farm. This notice shall be by certified mail sent to the address on record at the  
42 property tax office in the county in which the land is ~~located~~ located. Notice to a county  
43 shall be sent to the county manager or, if there is no county manager, to the chair of the

1 board of county commissioners. Notice to a local health department shall be sent to the  
2 local health director. The written notice shall include all of the following:

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

14 Section 4.2. G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this  
15 act, applies to any new liquid animal waste management system for which construction  
16 commences on or after the date this act becomes law and to any expansion of an existing  
17 liquid animal waste management system for which construction commences on or after  
18 the date this act becomes law.

19  
20 **PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN**  
21 **WATER REVOLVING LOAN AND GRANT FUND TO ASSIST**  
22 **LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND**  
23 **PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY**  
24 **FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED**  
25 **ON COMPREHENSIVE LAND-USE PLANNING BY LOCAL**  
26 **GOVERNMENTS**

27  
28 Section 5.1. G.S. 159G-10 reads as rewritten:

29 **"§ 159G-10. Priorities.**

30 (a) Determination. – Determination of priorities to be assigned each eligible  
31 application shall be made semiannually by each receiving agency during each fiscal year.  
32 Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-  
33 6(c)(1) shall be considered by the receiving agency with every other application filed  
34 under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible  
35 for consideration during the same priority period, to determine the priority to be assigned  
36 to each application. The same procedure shall apply to every eligible application filed  
37 under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which  
38 does not contain the information required by this Chapter or regulations adopted by the  
39 receiving agency(s) shall not be deemed received until such information is furnished by  
40 the applicant to the receiving agency.

41 (a1) **(See note)** Expired.

42 (b) Priority Factors. – All applications for revolving loans or grants under this  
43 Chapter eligible for consideration during each priority period shall be assigned a priority



1 for such funds by the receiving agency. The priority factors shall be similar to those  
2 developed under the North Carolina Clean Water Bond Act of 1977, as provided in and  
3 modified by this subsection.

4 (1) General Criteria. –

5 a. The general criteria provided in 1 NCAC 22.0401 through .0403  
6 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c)  
7 shall apply only to State funds appropriated to match available  
8 federal funds.

9 b. The existence of a comprehensive land-use plan that meets the  
10 requirements of subsection (e) of this section is a general  
11 criterion for determining which local government units will  
12 receive a loan or grant. A local government unit that is not  
13 authorized to adopt a comprehensive land-use plan but that is  
14 located in whole or in part in another local government unit that  
15 has adopted a comprehensive land-use plan shall receive the  
16 same priority treatment as a local government unit that has  
17 authority to adopt a comprehensive land-use plan. A  
18 comprehensive land-use plan that meets the requirements of  
19 subsection (e) of this section and that exceeds the minimum State  
20 standards for protection of water resources shall receive more  
21 points than a plan that does not exceed those standards.

22 (2) Wastewater Treatment Work Projects. – The priority criteria provided in  
23 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to  
24 applications for wastewater treatment work projects, except that 1  
25 NCAC 22.0503 shall not apply.

26 (3) Wastewater Collection System Projects. – The priority criteria provided  
27 in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to  
28 applications for wastewater collection system projects, except that 1  
29 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall  
30 not apply.

31 (4) Water Supply System Projects. – The priority criteria provided in 1  
32 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to  
33 applications for water supply system projects.

34 (5) Wastewater Treatment Works Improvements to Meet Nitrogen and  
35 Phosphorous Limits. – The Environmental Management Commission  
36 shall adopt a rule specifying priority criteria for modifications to  
37 existing permitted wastewater treatment facilities that are owned or  
38 operated by local government units and that are subject to G.S. 143-  
39 215.1(c1) or G.S. 143-215.1(c2) to enable local government units to  
40 comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

41 ~~(5)~~(6) The total number of points available in the respective categories shall be  
42 deemed adjusted in accordance with the provisions of subdivisions (1)  
43 through ~~(4)~~(5) of this subsection.

1 (c) Assignment of Priority. – A written statement relative to each priority assigned  
2 shall be prepared by the receiving agency and shall be attached to the application. The  
3 priority assigned shall be conclusive.

4 (d) Failure to Qualify. – Any application filed under G.S. 159G-5(c), G.S. 159G-  
5 6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the  
6 priority period in which the application was eligible for consideration by reason of the  
7 priority assigned the application shall be considered for a revolving loan or grant during  
8 the next succeeding priority period upon request of the applicant. If such application  
9 should again fail to qualify for a revolving loan or grant during the second priority period  
10 by reason of the priority assigned, the application shall receive no further consideration.  
11 An applicant may file a new application at any time, and may amend any pending  
12 application to include additional data or information.

13 (e) Land-Use Plan. – Local government units are encouraged to adopt  
14 comprehensive land-use plans. The Division of Community Assistance in the  
15 Department of Commerce shall, upon request, provide technical assistance to any  
16 economically distressed local government unit in preparing a comprehensive land-use  
17 plan. To qualify as a comprehensive land-use plan, a plan must meet all of the following  
18 requirements:

19 (1) Be adopted by the governing body of the local government unit covered  
20 by the plan.

21 (2) Promote economically and environmentally sustainable development.

22 (3) Establish verifiable goals to be met through compliance with the plan.

23 (4) Be approved by the Office of State Planning."

24 Section 5.2. G.S. 159G-3 is amended by adding a new subdivision to read:

25 "(7a) 'Economically distressed local government unit' means a local  
26 government unit located, in whole or in part, in a county designated as  
27 economically distressed by the Secretary of Commerce under G.S.  
28 143B-437A."

## 30 PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR 31 SURFACE WATERS

32  
33 Section 6.1. G.S. 143-215.1 is amended by adding four new subsections to  
34 read:

35 "(c1) Any person who is required to obtain an individual wastewater permit under  
36 this section for a facility discharging either to the surface waters of the State that have  
37 been classified as nutrient sensitive waters (NSW) under rules adopted by the  
38 Commission or to other surface water bodies of the State specifically designated by the  
39 Commission by rule where nitrogen is a nutrient of concern shall not discharge more than  
40 an average annual mass load of total nitrogen than would result from a discharge of the  
41 permitted flow having a total nitrogen concentration of four milligrams of nitrogen per  
42 liter (4.0 mg/l). If the Commission determines that the assimilative capacity for nitrogen  
43 of a water body has been exceeded, the Commission shall establish by rule a maximum

1 mass load for total nitrogen for that water body. The maximum mass load for total  
2 nitrogen established by the Commission may require permitted flows to have a total  
3 nitrogen concentration less than those set out in this subsection. The maximum mass  
4 load of total nitrogen for all wastewater discharges into a water body shall not exceed that  
5 required to meet the wastewater discharge allocation or the annual mass load for nitrogen  
6 based on the permitted flow and total nitrogen concentration required by this subsection,  
7 whichever is less. The total nitrogen concentration of 4.0 mg/l for NSW and other waters  
8 required by this subsection apply only to:

9 (1) Facilities that were placed into operation prior to 1 July 1997 or for  
10 which an authorization to construct was issued prior to 1 July 1997 and  
11 that have a design capacity to discharge 500,000 gallons per day or  
12 more.

13 (2) Facilities for which an authorization to construct is issued on or after 1  
14 July 1997.

15 (c2) Any person who is required to obtain an individual wastewater permit under  
16 this section for a facility discharging to surface water bodies of the State specifically  
17 designated by the Commission by rule where phosphorous is a nutrient of concern shall  
18 not discharge more than an average annual mass load of total phosphorous than would  
19 result from a discharge of the permitted flow having a total phosphorous concentration of  
20 two milligrams of phosphorous per liter (2.0 mg/l). If the Commission determines that  
21 the assimilative capacity for phosphorous of a water body has been exceeded, the  
22 Commission shall establish by rule a maximum mass load for total phosphorous for that  
23 water body. The maximum mass load for total phosphorous established by the  
24 Commission may require permitted flows to have a total phosphorous concentration less  
25 than that set out in this subsection. The maximum mass load of total phosphorous for all  
26 wastewater discharges into a water body shall not exceed that required to meet the  
27 wastewater discharge allocation or the annual mass load for phosphorous based on the  
28 permitted flow and total phosphorous concentration required by this subsection,  
29 whichever is less.

30 (c3) A person to whom subsection (c1) or (c2) of this section applies may meet the  
31 limits established under those subsections either individually or on the basis of a  
32 cooperative agreement with other persons who hold individual wastewater permits if the  
33 cooperative agreement is approved by the Commission. A person to whom subsection  
34 (c1) or (c2) of this section applies whose agreement to accept wastewater from another  
35 wastewater treatment facility that discharges into the same water body and that results in  
36 the elimination of the discharge from that wastewater treatment facility shall be allowed  
37 to increase the average annual mass load of total nitrogen and total phosphorous that  
38 person discharges by the average annual mass load of total nitrogen and total  
39 phosphorous of the wastewater treatment facility that is eliminated. If the wastewater  
40 treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per  
41 day, the average annual mass load of total nitrogen or phosphorous shall be calculated  
42 from the most recent available data. A person to whom this subsection applies shall  
43 comply with nitrogen and phosphorous discharge monitoring requirements established by

1 the Commission. This average annual load of nitrogen or phosphorous shall be assigned  
2 to the wastewater discharge allocation of the wastewater treatment facility that accepts  
3 the wastewater.

4 (c4) A person to whom subsection (c1) of this section applies may request the  
5 Commission to approve a total nitrogen concentration greater than that set out in  
6 subsection (c1) of this section at a decreased permitted flow so long as the average annual  
7 mass load of total nitrogen is equal to or is less than that required under subsection (c1)  
8 of this section. A person to whom subsection (c2) of this section applies may request the  
9 Commission to approve a total phosphorous concentration greater than that set out in  
10 subsection (c2) of this section at a decreased permitted flow so long as the average annual  
11 mass load of total phosphorous is equal to or is less than that required under subsection  
12 (c2) of this section. If, after any 12-month period following approval of a greater  
13 concentration at a decreased permitted flow, the Commission finds that the greater  
14 concentration at a decreased permitted flow does not result in an average annual mass  
15 load of total nitrogen or total phosphorous equal to or less than those that would be  
16 achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its  
17 approval of the greater concentration at a decreased permitted flow and the requirements  
18 of subsections (c1) and (c2) of this section shall apply."

19 Section 6.2. G.S. 143-215.6A(a) is amended by adding a new subdivision to  
20 read:

21 "(10) Violates G.S. 143-215.1(c1), G.S. 143-215.1(c2), or a rule adopted  
22 pursuant to G.S. 143-215.1(c1) or G.S. 143-215.1(c2)."

23 Section 6.3. By 1 November 1997, the Environmental Management  
24 Commission shall develop a schedule of dates between 1 January 1998, and 1 January  
25 2003, by which existing facilities must comply with G.S. 143-215.1(c1) and G.S. 143-  
26 215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall  
27 follow as closely as possible the dates on which permits for existing facilities must be  
28 renewed. New facilities and expansions of existing facilities for which an application for  
29 a permit is received by the Department of Environment, Health, and Natural Resources  
30 on behalf of the Environmental Management Commission prior to the date this act  
31 becomes effective shall be treated as existing facilities.

## 32 33 **PART VII. STORMWATER MANAGEMENT**

34  
35 Section 7.1. G.S. 143-214.7 reads as rewritten:

36 "**§ 143-214.7. Stormwater runoff rules and programs.**

37 (a) Policy, Purpose and Intent. – The Commission shall undertake a continuing  
38 planning process to develop and adopt a statewide plan with regard to establishing and  
39 enforcing stormwater rules for the purpose of protecting the surface waters of the State.  
40 It is the purpose and intent of this section that, in developing stormwater runoff rules and  
41 programs, the Commission may utilize stormwater rules established by the Commission  
42 to protect classified shellfish waters, water supply watersheds, and outstanding resource  
43 waters; and to control stormwater runoff disposal in coastal counties and other nonpoint

1 sources. Further, it is the intent of this section that the Commission phase in the  
2 stormwater rules on a priority basis for all sources of pollution to the water. The plan  
3 shall be applied evenhandedly throughout the State to address the State's water quality  
4 needs. The Commission shall continually monitor water quality in the State and shall  
5 revise stormwater runoff rules as necessary to protect water quality. As necessary, the  
6 stormwater rules shall be modified to comply with federal regulations.

7 (b) The Commission shall ~~be authorized and directed to implement~~ stormwater  
8 runoff rules and programs for point and nonpoint sources on a phased-in statewide basis.  
9 The Commission shall consider standards and best management practices for the  
10 protection of the State's water resources in the following order of priority:

11 (1) Classified shellfish ~~waters;~~ waters.

12 (2) Water supply ~~watersheds;~~ watersheds.

13 (3) Outstanding resource ~~waters;~~ waters.

14 (4) High quality ~~waters;~~ and waters.

15 (5) ~~Other waters where~~ All other waters of the State to the extent that the  
16 Commission finds control of stormwater is needed to meet the purposes  
17 of this Article. Provided however, that prior to implementation of rules  
18 under this subdivision (5), the Commission shall consult with the  
19 Environmental Review Commission.

20 (c) ~~Chapter 150B of the General Statutes governs adoption of rules by the Commission.~~  
21 The Commission shall develop model stormwater management programs that may be  
22 implemented by State agencies and units of local government. A State agency or unit of  
23 local government may submit to the Commission for its approval a stormwater control  
24 program for implementation within its jurisdiction. To this end, State agencies are  
25 authorized to adopt rules, and units of local government are authorized to adopt  
26 ordinances and regulations necessary to establish and enforce stormwater control  
27 programs. Units of local government are authorized to create or designate agencies or  
28 subdivisions to administer and enforce the programs. Two or more units of local  
29 government are authorized to establish a joint program and to enter into any agreements  
30 that are necessary for the proper administration and enforcement of the program.

31 (d) The Commission shall review each stormwater management program  
32 submitted by a State agency or unit of local government and shall notify the State agency  
33 or unit of local government that submitted the program that the program has been  
34 approved, approved with modifications, or disapproved. The Commission shall approve  
35 a program only if it finds that the standards of the program equal or exceed those of the  
36 model program adopted by the Commission pursuant to this section.

37 (e) The Commission shall annually report to the Environmental Review  
38 Commission on the implementation of this section, including the status of any stormwater  
39 control programs administered by State agencies and units of local government, on or  
40 before 1 October of each year."

41 Section 7.2. The Environmental Management Commission shall make the first  
42 annual report required by G.S. 143-214.7(e), as enacted by Section 7.1 of this act, on or  
43 before 1 October 1998.

1 Section 7.3. The Department of Transportation shall work diligently and in  
2 full cooperation with the Division of Water Quality of the Department of Environment,  
3 Health, and Natural Resources, using whatever resources may be necessary, to complete  
4 the development of a statewide stormwater management permit under the National  
5 Pollutant Discharge Elimination System (NPDES). The General Assembly intends that  
6 this permit govern all programs administered by the Department of Transportation and  
7 that the permit will be issued no later than 1 October 1997. The Department of  
8 Transportation and the Division of Water Quality shall jointly report to the  
9 Environmental Review Commission as to their progress in meeting the mandate of this  
10 section no later than 1 October 1997.

11  
12 **PART VIII. COMPLETION OF BASINWIDE WATER QUALITY**  
13 **MANAGEMENT PLANS FOR EACH OF THE STATE'S**  
14 **SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS**  
15 **FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS;**  
16 **ADOPTION OF TOTAL MAXIMUM DAILY LOADS FOR**  
17 **EACH RIVER BASIN**  
18

19 Section 8.1. The General Assembly makes the following findings:

- 20 (1) There are 17 major river basins in the State.
- 21 (2) Many activities occur in the vicinity of each of these river basins, and  
22 the activities and conditions in one river basin may vary greatly from  
23 those in another river basin.
- 24 (3) The public is focusing on the swine industry's role in degrading water  
25 quality, but, in fact, numerous other industries and even private citizens  
26 are responsible for contributing nutrients and toxins to the waters of the  
27 State. Among the point source and nonpoint sources of nutrients and  
28 toxins in our State's waters are: municipal wastewater facilities,  
29 industrial wastewater systems, septic tank systems, stormwater  
30 management systems, golf courses, farms that use fertilizers and  
31 pesticides for crops, public and commercial lawns and gardens, as well  
32 as animal operations.
- 33 (4) The best and most effective approach to protecting and improving water  
34 quality is a comprehensive, systemwide management approach.
- 35 (5) Basinwide water quality management is an approach already being  
36 taken by the Department of Environment, Health, and Natural  
37 Resources to improve the efficiency, effectiveness, and consistency of  
38 its water quality protection program. It is not a new regulatory program;  
39 it is a watershed-based approach that provides for basinwide permitting  
40 and integration of point and nonpoint source controls through existing  
41 regulatory and cooperative programs. The Neuse River Basinwide  
42 Management Plan has already been released. Seventeen basinwide

1 plans are planned to be prepared by the Department over the next five  
2 years.

3 (6) The better solution to improving water quality lies not in abandoning  
4 efforts under way in an effort to find a new solution, but to accelerate  
5 effective efforts currently in progress by establishing a deadline for  
6 completing, and expediting the implementation of, the 17  
7 comprehensive conservation and management plans for each major river  
8 basin in the State.

9 (7) The public should be informed of the complexity of the problems  
10 regarding water quality so that the public can appreciate the  
11 effectiveness of a systemwide approach and the degree of effort that has  
12 already been expended to address these problems. Public involvement  
13 should be encouraged, and public education should be enhanced.

14 Section 8.2. Part 1 of Article 21 of Chapter 143 of the General Statutes is  
15 amended by adding a new section to read:

16 **"§ 143-215.8B. Basinwide water quality management plans.**

17 (a) The Commission shall develop and implement a basinwide water quality  
18 management plan for each of the 17 major river basins in the State. In developing and  
19 implementing each plan, the Commission shall consider the cumulative impacts of all  
20 activities across a river basin and all point sources and nonpoint sources of nutrients and  
21 toxins, including municipal wastewater facilities, industrial wastewater systems, septic  
22 tank systems, stormwater management systems, golf courses, farms that use fertilizers  
23 and pesticides for crops, public and commercial lawns and gardens, and animal  
24 operations.

25 (b) Each basinwide water quality management plan shall:

26 (1) Provide that all point sources and nonpoint sources of pollutants jointly  
27 share the responsibility of reducing the nutrients and toxins in the State's  
28 waters in a fair, reasonable, and proportionate manner, using computer  
29 modeling and the best science and technology reasonably available and  
30 considering future anticipated population growth and economic  
31 development.

32 (2) Incorporate protective buffers along all perennial bodies of water for  
33 new developmental activities. The Commission shall consider the  
34 ecological reasons for each buffer and shall base any requirements for  
35 the buffer on those reasons. The Commission shall also consider and  
36 adopt an equitable approach for determining which developmental  
37 activities shall be defined as 'new developmental activities.'

38 (3) Require appropriate management of any new developmental activity  
39 that is agricultural, residential, commercial, or industrial in nature, if the  
40 new developmental activity is to occur on land that is located within a  
41 100-year floodplain.

42 (4) If any of the waters located within the river basin are designated as  
43 nutrient sensitive water, then the basinwide water quality management

1           plan shall establish a goal to reduce the average annual load of nutrients  
2           delivered to surface waters within the river basin from point and  
3           nonpoint sources. The Commission shall establish a nutrient reduction  
4           goal for the nutrient or nutrients of concern that will result in  
5           improvements to water quality such that the designated uses of the  
6           water, as provided in the classification of the water under G.S. 143-  
7           214.1(d), are not impaired. The plan shall require that incremental  
8           progress toward achieving the goal be demonstrated each year. The  
9           Commission shall develop a five-year plan to achieve the goal. In  
10           developing the plan, the Commission shall determine and allow  
11           appropriate credit toward achieving the goal for reductions of water  
12           pollution by point and nonpoint sources through voluntary measures.

13           (5) Any other components of the plan that the Commission determines to be  
14           necessary.

15           (c) The Commission shall review and revise its 17 basinwide water quality  
16           management plans at least every five years to reflect changes in permits that have been  
17           renewed during the previous five-year permit renewal cycle, improvements in modeling  
18           methods, improvements in wastewater treatment technology, and advances in scientific  
19           knowledge.

20           (d) The Commission and the Department shall each report on a quarterly basis to  
21           the Environmental Review Commission on the progress in developing and implementing  
22           basinwide water quality management plans and on increasing public involvement and  
23           public education in connection with basinwide water quality management planning. The  
24           report by the Department shall include a written statement as to all concentrations of  
25           heavy metals and other pollutants in the surface waters of the State that are identified in  
26           the course of preparing the basinwide water quality management plans. The report under  
27           this section by the Commission shall be made as a part of the quarterly report required  
28           under G.S. 143B-282(b). The report under this section by the Department shall be made  
29           on or before the first day of each calendar quarter."

30           Section 8.3. The Environmental Management Commission shall increase its  
31           current efforts to involve the public in the development and implementation of the  
32           basinwide water quality management plans, including conducting public hearings  
33           throughout the State. The Department of Environment, Health, and Natural Resources  
34           shall increase public education efforts to inform the public of the complexity of the  
35           problems related to water quality, the benefits of taking a comprehensive, systemwide  
36           approach to water quality improvement, and the need for all point and nonpoint sources  
37           of pollutants to have an active role in reducing nutrients and toxins, either by reducing the  
38           amount of nutrients and toxins used or by improving the treatment and disposal of  
39           wastewater, or both. The Department shall provide press releases on at least a monthly  
40           basis for the purpose of keeping the public well-informed of water quality issues in the  
41           State.

42           Section 8.4. G.S. 143B-282 is amended by adding a new subsection to read:



1       "(c) The Environmental Management Commission shall implement the provisions  
2 of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired  
3 waters and by developing, on a basinwide basis, appropriate total maximum daily loads  
4 of pollutants for those targeted waters. The Commission shall incorporate those total  
5 maximum daily loads approved by the United States Environmental Protection Agency  
6 into its continuing planning process and shall adopt rules setting out strategies necessary  
7 for assuring that water quality standards are met by any point or nonpoint source or by  
8 any category of point or nonpoint sources that is determined by the Commission to be  
9 contributing to the water quality impairment. These strategies may include, but are not  
10 limited to, additional monitoring, effluent limitations, supplemental standards or  
11 classifications, best management practices, schedules of compliance, and the  
12 establishment of and delegations to intergovernmental basinwide groups."

13       Section 8.5. G.S. 143B-282(a)(2) is amended by adding a new sub-subdivision  
14 to read:

15               "j. To implement basinwide water quality management plans  
16 developed pursuant to G.S. 143-215.8B."

17       Section 8.6. The Environmental Management Commission may adopt rules to  
18 implement this Part as provided in Article 2A of Chapter 150B of the General Statutes.  
19 The Environmental Management Commission shall not adopt a temporary rule to  
20 implement this Part. The Environmental Management Commission shall report on its  
21 progress in implementing this Part as a part of each quarterly report the Environmental  
22 Management Commission makes to the Environmental Review Commission pursuant to  
23 G.S. 143B-282(b).

## 24                               **PART IX.               FERTILIZER USE AT GOLF COURSES**

25       Section 9.1. Article 3 of Chapter 90A of the General Statutes is amended by  
26 adding a new Part to read:

### 27                               **"PART 3. CERTIFICATION OF APPLICATORS OF** 28 **SOIL ENRICHING NUTRIENTS AT GOLF COURSES.**

#### 29 **"§ 90A-48. Purpose.**

30       The purpose of this Part is to reduce nonpoint source pollution in order to protect the  
31 public health, to conserve and protect the quality of the State's water resources, to  
32 encourage the development and improvement of the State's land for the recreational use  
33 and enjoyment of private and public golf courses, and to require the examination of  
34 persons who apply soil-enriching nutrients onto land at golf courses, and certification of  
35 their competency to apply or supervise the application of soil-enriching nutrients onto  
36 land at golf courses.

#### 37 **"§ 90A-48.1. Definitions.**

38       As used in this Part:

39               (1) 'Application' means spraying, laying, spreading on, irrigating, or  
40 injecting soil-enriching nutrients onto land.

- 1           (2) 'Commission' means the Water Pollution Control System Operators  
2           Certification Commission.
- 3           (3) 'Operator in charge' means a person who holds a currently valid  
4           certificate for the application of soil-enriching nutrients onto land at golf  
5           courses and who has primary responsibility for their application.
- 6           (4) 'Soil-enriching nutrients' means fertilizers or soil-enriching substances  
7           containing nitrogen, phosphorus, zinc, or other soil-enriching elements  
8           or minerals.
- 9           (5) 'Owner' means the person who owns or controls the land used for a golf  
10           course or the person's lessee or designee.

11 **"§ 90A-48.2. Certified operator in charge required; qualifications for certification.**

12       (a) No owner or other person in control of a golf course onto which soil-enriching  
13 nutrients are applied shall allow the application by a person who does not hold a valid  
14 certificate as an operator in charge of the application of soil-enriching nutrients onto land  
15 at golf courses issued by the Commission. No person shall perform the duties of an  
16 operator in charge of the application of soil-enriching nutrients onto land at golf courses  
17 without being certified under the provisions of this Part. Other persons may assist in the  
18 application of soil-enriching nutrients so long as they are directly supervised by an  
19 operator in charge who is certified under this Part.

20       (b) The owner or other person in control of a golf course onto which soil-enriching  
21 nutrients are applied may contract with a certified operator in charge of the application of  
22 soil-enriching nutrients onto land at golf courses to provide for the application of soil-  
23 enriching nutrients onto that land. The Commission may adopt rules requiring that any  
24 certified operator in charge who contracts with one or more owners or other persons in  
25 control of a golf course onto which soil-enriching nutrients are applied file an annual  
26 report with the Commission as to which property the services of the operator in charge  
27 are provided.

28 **"§ 90A-48.3. Qualifications for certification; training; examination.**

29       (a) The Commission shall develop and administer a certification program for an  
30 operator in charge of the application of soil-enriching nutrients onto land at golf courses  
31 that provides for receipt of applications, training, and examination of applicants and for  
32 investigation of the qualifications of applicants.

33       (b) The Commission, in cooperation with the Division of Water Quality of the  
34 Department of Environment, Health, and Natural Resources, and the Cooperative  
35 Extension Service, shall develop and administer a training program for an operator in  
36 charge of the application of soil-enriching nutrients onto land at golf courses. An  
37 applicant for initial certification shall complete 10 hours of classroom instruction prior to  
38 taking the examination. In order to remain certified, an operator in charge of the  
39 application of soil-enriching nutrients onto land at golf courses shall complete six hours  
40 of approved additional training during each three-year period following initial  
41 certification. A certified operator in charge of the application of soil-enriching nutrients  
42 onto land at golf courses who fails to complete approved additional training within 30

1 days of the end of the three-year period shall take and pass the examination for  
2 certification in order to renew the certificate.

3 **"§ 90A-48.4. Certificate renewals.**

4 A certificate holder shall renew the certificate annually. A certificate holder who fails  
5 to renew the certificate within 30 days of its expiration shall be required to take and pass  
6 the examination for certification in order to renew the certificate.

7 **"§ 90A-48.5. Suspension; revocation of certificate.**

8 (a) The Commission, in accordance with the provisions of Chapter 150B of the  
9 General Statutes, may suspend or revoke the certificate of any operator in charge who:

10 (1) Engages in fraud or deceit in obtaining certification.

11 (2) Fails to exercise reasonable care, judgment, or use of the operator's  
12 knowledge and ability in the performance of the duties of an operator in  
13 charge.

14 (3) Is incompetent or otherwise unable to properly perform the duties of an  
15 operator in charge.

16 (b) In addition to revocation of a certificate, the Commission may levy a civil  
17 penalty, not to exceed one thousand dollars (\$1,000) per violation, for willful violation of  
18 the requirements of this Part.

19 **"§ 90A-48.6. Rules.**

20 The Commission shall adopt rules to implement the provisions of this Part."

21  
22 **PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE**  
23 **OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL**  
24 **PENALTY LIABILITY**  
25

26 Section 10.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is  
27 amended by adding a new section to read:

28 **"§ 143-215.6E. Violation Points System applicable to swine farms.**

29 (a) The Commission shall develop a Violation Points System applicable to permits  
30 for animal waste management systems for swine farms. This system shall operate in  
31 addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority  
32 of the Commission to revoke a permit for an animal waste management system for a  
33 swine farm. The Violation Points System shall provide that:

34 (1) Violations that involve the greatest harm to the natural resources of the  
35 State, the groundwater or surface water quantity or quality, public  
36 health, or the environment shall receive the most points and shall be  
37 considered significant violations.

38 (2) Violations that are committed willfully or intentionally shall be  
39 considered significant violations.

40 (3) The number of points received shall be directly related to the degree of  
41 negligence or willfulness.

42 (4) The commission of three significant violations, or the commission of  
43 lesser violations that result in a predetermined cumulative number of

1           points, within a limited period of time of not less than five years shall  
2           result in the mandatory revocation of a permit.

3           (5)   The commission of one willful violation that results in serious harm  
4           may result in the revocation of a permit.

5           (b)   In developing the Violation Points System under this section, the Commission  
6           shall determine the:

7           (1)   Number of points that lesser violations must cumulatively total to result  
8           in the revocation of a permit.

9           (2)   Limited period of time during which the commission of three significant  
10           violations, or the commission of a greater number of lesser violations,  
11           will result in the revocation of the operator's permit. This limited period  
12           of time shall not be less than five years.

13           (3)   Duration of the permit revocation.

14           (4)   Conditions under which the person whose permit is revoked may  
15           reapply for another permit for an animal waste management system for  
16           a swine farm.

17           (c)   In developing the Violation Points System under this section, the Commission  
18           shall provide for an appeals process."

19           Section 10.2. (a) The Department of Environment, Health, and Natural  
20 Resources shall develop a recommended system of civil penalties applicable to  
21 integrators of swine operations. These civil penalties shall be imposed upon the  
22 revocation of a permit of an operator under contract with that integrator for the  
23 production of swine at the time the violation that resulted in the revocation of the  
24 operator's permit occurred, whether or not that operator was under contract with that  
25 integrator throughout the period of time all the violations that contributed to this permit  
26 revocation occurred. In conjunction with developing this system of civil penalties for  
27 integrators of swine operations, the Environmental Management Commission shall  
28 provide that the Director of the Division of Water Quality of the Department of  
29 Environment, Health, and Natural Resources notify all integrators of all violations  
30 assessed against operators who are under contract for the production of swine with that  
31 integrator and, upon the written request by the integrator, notify that integrator of all  
32 violations assessed an operator with whom the integrator contemplates entering into a  
33 contract. The Environmental Management Commission shall also study the issue of  
34 liability for cleanup costs and appropriate penalties for integrators of swine operations if  
35 an operator commits a willful, wanton, or grossly negligent violation that results in  
36 significant environmental damage.

37           (b)   No later than 1 March 1998, the Department of Environment, Health, and  
38 Natural Resources shall report its findings and recommendations, including legislative  
39 proposals, if any, on the issues to be studied under subsection (a) of this section. This  
40 report shall include a recommended system of civil penalties applicable to integrators of  
41 swine operations for violations by growers who are under contract with that integrator for  
42 the production of swine. The Environmental Review Commission shall determine

1 whether to submit a legislative proposal based upon this recommended system to the  
2 1997 General Assembly, 1998 Regular Session.

3  
4 **PART XI. CRIMINAL ENFORCEMENT FOR REPEATED**  
5 **VIOLATIONS; CLARIFICATION OF REQUIREMENT THAT**  
6 **PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE**  
7 **FINANCIALLY QUALIFIED**

8  
9 Section 11.1. G.S. 143-215.6A is amended by adding a new subsection to  
10 read:

11 "(a1) The Secretary shall refer to the State Bureau of Investigation for its review as  
12 to the possible commission of any criminal offense any person or facility that discharges  
13 waste in a manner that significantly violates this Article or rules adopted pursuant to this  
14 Article on two or more separate occasions in any three-year period. Upon receipt of a  
15 referral under this section, the State Bureau of Investigation may conduct an investigation  
16 and, if appropriate, refer the matter to the district attorney in whose jurisdiction any  
17 criminal offense has occurred. This subsection shall not be construed to limit the  
18 authority of the Secretary to refer any matter to the State Bureau of Investigation for  
19 review without regard to the number of possible offenses within any particular period of  
20 time."

21 Section 11.2. G.S. 143-215.1(b) reads as rewritten:

22 "(b) Commission's Power as to Permits. –

- 23 (1) The Commission shall act on all permits so as to prevent, so far as  
24 reasonably possible, considering relevant standards under State and  
25 federal laws, any significant increase in pollution of the waters of the  
26 State from any new or enlarged sources. No permit shall be denied and  
27 no condition shall be attached to the permit, except when the  
28 Commission finds such denial or such conditions necessary to effectuate  
29 the purposes of this Article.
- 30 (2) The Commission shall also act on all permits so as to prevent violation  
31 of water quality standards due to the cumulative effects of permit  
32 decisions. Cumulative effects are impacts attributable to the collective  
33 effects of a number of projects and include the effects of additional  
34 projects similar to the requested permit in areas available for  
35 development in the vicinity. All permit decisions shall require that the  
36 practicable waste treatment and disposal alternative with the least  
37 adverse impact on the environment be utilized.
- 38 (3) General permits may be issued under rules adopted pursuant to Chapter  
39 150B of the General Statutes. Such rules may provide that minor  
40 activities may occur under a general permit issued in accordance with  
41 conditions set out in such rules. All persons covered under general  
42 permits shall be subject to all enforcement procedures and remedies  
43 applicable under this Article.

- 1           (4) The Commission shall have the power:
- 2           a. To grant a permit with such conditions attached as the
- 3           Commission believes necessary to achieve the purposes of this
- 4           Article.
- 5           b. To require that an applicant satisfy the Department that the
- 6           applicant, or any parent, subsidiary, or other affiliate of the
- 7           applicant or parent:
- 8           1. Is financially qualified to carry out the activity for which
- 9           the permit is required under subsection (a) of this ~~section;~~
- 10           ~~and section.~~ Financial qualification may be demonstrated
- 11           through the use of a letter of credit, insurance, surety, trust
- 12           agreement, financial test, bond, or a guarantee by
- 13           corporate parents or third parties who can pass the
- 14           financial test. No permit shall be issued under this section
- 15           until financial qualification is established and the issuance
- 16           of the permit shall be contingent on the continuance of the
- 17           financial qualification for the duration of the activity for
- 18           which the permit was issued.
- 19           2. Has substantially complied with the effluent standards and
- 20           limitations and waste management treatment practices
- 21           applicable to any activity in which the applicant has
- 22           previously engaged, and has been in substantial
- 23           compliance with other federal and state laws, regulations,
- 24           and rules for the protection of the environment.
- 25           3. As used in this subdivision, the words 'affiliate,' 'parent,'
- 26           and 'subsidiary' have the same meaning as in 17 Code of
- 27           Federal Regulations § 240.12b-2 (1 April 1990 Edition).
- 28           c. To modify or revoke any permit upon not less than 60 days'
- 29           written notice to any person affected.
- 30           d. To designate certain classes of minor activities for which a
- 31           general permit may be issued, after considering:
- 32           1. The environmental impact of the activities;
- 33           2. How often the activities are carried out;
- 34           3. The need for individual permit oversight; and
- 35           4. The need for public review and comment on individual
- 36           permits.
- 37           e. To designate certain classes of minor activities for which:
- 38           1. Performance conditions may be established by rule; and
- 39           2. Individual or general permits are not required."
- 40
- 41
- 42

**PART XII.            ADDITIONAL STUDIES**

1           Section 12.1. The Environmental Review Commission shall study the  
2 feasibility and the desirability of requiring persons who apply fertilizers or other soil-  
3 enriching nutrients onto land other than golf courses to be certified under a certification  
4 program that requires training and passing an examination and that is similar to the  
5 certification program required of those who apply soil-enriching nutrients onto land at  
6 golf courses, as required by Article 3 of Chapter 90A of the General Statutes, as enacted  
7 by Section 9.1 of this act. In conjunction with this study, the Environmental Review  
8 Commission shall consider the amounts of fertilizers used on public roadways, at public  
9 parks and recreation areas, at commercial properties, at churches, at athletic fields and  
10 schools, near airstrips at airports, and on residential lawns and gardens that are  
11 maintained by commercial lawn services as well as those that are maintained by the  
12 residential dweller. During this study, the Department of Transportation shall report to  
13 the Environmental Review Commission the amounts of fertilizers and pesticides that it  
14 uses to maintain turfgrass, ornamental plantings, and trees along the State roadways. The  
15 Environmental Review Commission shall submit its legislative recommendations, if any,  
16 resulting from this study to the 1997 General Assembly, 1998 Regular Session.

17           Section 12.2. The Environmental Review Commission shall study the  
18 feasibility and desirability of establishing a voluntary education program designed to  
19 educate members of the public who maintain residential lawns or gardens concerning the  
20 impact nutrients and pesticides have on the environment of the State, the responsible use  
21 of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and  
22 pesticides into the surface and groundwaters of the State. In conjunction with this study,  
23 the Environmental Review Commission shall study the feasibility and desirability of  
24 directing the North Carolina Cooperative Extension Service to develop and implement  
25 such a voluntary education program. The Environmental Review Commission shall  
26 submit its legislative recommendations, if any, resulting from this study to the 1997  
27 General Assembly, 1998 Regular Session.

28           Section 12.3. The Department of Agriculture shall submit the next North  
29 Carolina Turfgrass Survey to the Environmental Review Commission no later than one  
30 month after the survey is published.

31           Section 12.4. The Environmental Review Commission shall study the  
32 development of guidelines for best management practices for golf courses. The study  
33 shall address golf course planning, siting, design, construction, maintenance, and  
34 operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and  
35 herbicides; waste management; and any other matters necessary to protect water quality,  
36 public health, and the environment. The Environmental Review Commission shall  
37 submit its legislative recommendations, if any, resulting from this study to the 1997  
38 General Assembly, 1998 Regular Session.

39           Section 12.5. The Environmental Review Commission shall study the  
40 development of guidelines for best management practices for septic tank systems for both  
41 the installation of new septic tank systems and the replacement or improvement of  
42 existing septic tank systems that supplement any rules governing septic tank systems that  
43 are adopted by the Commission for Health Services, including standards for devices and

1 practices relating to septic tank installation, operation, maintenance, and repair. The  
2 Environmental Review Commission shall consider the use of incentives, including tax  
3 credits, that could be implemented to encourage the use of best management practices  
4 for septic tank systems. The Environmental Review Commission shall submit its  
5 legislative recommendations, if any, resulting from this study to the 1997 General  
6 Assembly, 1998 Regular Session. As used in this section, the phrase "devices and  
7 practices" includes, but is not limited to:

- 8 (1) Filters or other devices designed to improve the efficiency of septic tank  
9 systems.
- 10 (2) Risers or other devices designed to facilitate pumping.
- 11 (3) Electronic warning devices that signal when the solid or liquid waste in  
12 the system has reached a level such that the septic tank needs to be  
13 pumped.
- 14 (4) Alternative and innovative systems for improved wastewater treatment  
15 and disposal.
- 16 (5) Any other approved technology or practice that demonstrates improved  
17 efficiency for septic systems.

18 Section 12.6. (a) The Department of Agriculture shall develop a plan to phase out the  
19 use of anaerobic lagoons and sprayfields as primary methods of disposing of animal  
20 waste at swine farms.

21 (b) In developing the plan under subsection (a) of this section, the Department of  
22 Agriculture shall consider the feasibility of phasing in the use of solid waste management  
23 systems and aerobic wastewater management systems to treat and dispose of animal  
24 waste at swine farms, including, without limitation, package treatment plants, closed-loop  
25 systems, and central waste disposal facilities that serve multiple swine farms.

26 (c) No later than May 1, 1998, the Department of Agriculture shall present the  
27 plan developed under this section in a written report to the 1998 Regular Session of the  
28 1997 General Assembly and to the Environmental Review Commission.

### 29 30 **PART XIII. ASSUMPTION OF CONTROL OF NONCOMPLYING** 31 **PUBLICLY OWNED TREATMENT WORKS BY THE** 32 **ENVIRONMENTAL MANAGEMENT COMMISSION** 33

34 Section 13.1. G.S. 143-215.3(a) is amended by adding a new subdivision to  
35 read:

36 "(18) To assume control and operate a publicly owned treatment works that  
37 persistently fails to comply with this Article, rules adopted pursuant to  
38 this Article, or other federal and State laws, regulations and rules for the  
39 protection of public health and the environment. Before assuming  
40 control of a publicly owned treatment works, the Commission shall  
41 notify the unit of local government that owns or operates the treatment  
42 works that the Commission intends to assume control of the treatment  
43 works unless the local government immediately takes whatever steps are



1           necessary to bring the treatment works into compliance with applicable  
2           requirements. The Commission shall also consult with the Local  
3           Government Commission before assuming control and operation of a  
4           publicly owned treatment works. If the Commission assumes control  
5           and operation of a publicly owned treatment works, the unit of local  
6           government that owns or operates the treatment works is liable to the  
7           Commission for all costs associated with the control and operation of  
8           the treatment works, including the cost of any repairs and improvements  
9           necessary to bring the treatment works into compliance with applicable  
10           requirements. If the Commission assumes control and operation of a  
11           publicly owned treatment works, it shall continue to operate the  
12           treatment works until such time as the Commission, in consultation with  
13           the Local Government Commission, is satisfied that the unit of local  
14           government is both capable of and willing to operate the treatment  
15           works in compliance with all applicable requirements."

16  
17           **PART XIV.     IMPLEMENTATION OF A RECOMMENDATION OF**  
18           **THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE**  
19           **TO MODIFY THE PROCEDURES CONCERNING FINAL**  
20           **ADMINISTRATIVE DECISIONS IN CONTESTED CASES**  
21           **HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS**

22  
23           Section 14.1. G.S. 150B-36 reads as rewritten:

24           "**§ 150B-36. Final decision.**

- 25           (a)           (1)       ~~Before the agency makes a final decision, it shall~~ After an agency  
26                       receives the official record in a contested case, the agency must give  
27                       each party an opportunity to the contested case 15 days to file  
28                       exceptions to the decision or order recommended by the  
29                       administrative law judge, judge and to present written arguments to  
30                       those in the agency who will make the final decision or order. If none  
31                       of the parties files exceptions to the recommended decision or order  
32                       within the 15-day period, the agency is considered to have adopted the  
33                       administrative law judge's recommended decision or order as the  
34                       agency's final decision or order.
- 35           (2)       If a party files in good faith a timely and sufficient affidavit of personal  
36                       bias or other reason for disqualification of a member of the agency  
37                       making the final decision, the agency shall determine the matter as a  
38                       part of the record in the ~~ease, and the case.~~ The determination is subject  
39                       to judicial review at the conclusion of the case.
- 40           (b)           (1)       A final decision or order in a contested case shall be made by  
41                       ~~the agency in writing after review of agency within the time set by G.S.~~  
42                       150B-44. If the agency does not adopt as its final decision or order  
43                       the recommended decision or order made in the contested case under

1            subsection (a) of this section, it must make a written final decision or  
2            order. In making its final decision or order, the agency may consider  
3            only the official record as defined in G.S. 150B-37(a) and the  
4            exceptions filed by a party. The final decision or order shall include  
5            findings of fact and conclusions of law. The findings of fact and  
6            conclusions of law made in the contested case by the administrative  
7            law judge are binding on the agency in making its final decision or  
8            order if they are supported by substantial evidence admissible under  
9            G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record.

10            (2) If the agency does not adopt the administrative law judge's  
11            recommended decision or order as its final decision, ~~decision or order,~~  
12            the agency shall state in its decision or order the specific reasons why it  
13            did not adopt the administrative law judge's recommended ~~decision.~~ ~~The~~  
14            ~~agency may consider only the official record prepared pursuant to G.S. 150B-~~  
15            ~~37 in making a final decision or order, and the final decision or order shall be~~  
16            ~~supported by substantial evidence admissible under G.S. 150B-29(a), 150B-~~  
17            ~~30, or 150B-31.~~ decision or order. A copy of the agency's decision or  
18            order shall be served upon each party personally or by certified mail  
19            addressed to the party at the latest address given by the party to the  
20            agency, and a copy shall be furnished to ~~his~~ each party's attorney of  
21            record and the Office of Administrative Hearings.

22            (c) The following decisions made by administrative law judges in contested cases  
23            are final decisions:

- 24            (1) A determination that the Office of Administrative Hearings lacks  
25            jurisdiction.
- 26            (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- 27            (3) An order entered pursuant to a written prehearing motion that either  
28            dismisses the contested case for failure of the petitioner to prosecute or  
29            grants the relief requested when a party does not comply with  
30            procedural requirements.
- 31            (4) An order entered pursuant to a prehearing motion to dismiss the  
32            contested case in accordance with G.S. 1A-1, Rule 12(b) when the order  
33            disposes of all issues in the contested case."

34            Section 14.2. G.S. 150B-37(c) reads as rewritten:

35            "(c) The Office of Administrative Hearings shall forward a copy of the official  
36            record to the agency making the final ~~decision and shall forward a copy of the recommended~~  
37            ~~decision to each party.~~ decision."

38            Section 14.3. G.S. 150B-44 reads as rewritten:

39            **"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

40            Unreasonable delay on the part of any agency or administrative law judge in taking  
41            any required action shall be justification for any person whose rights, duties, or privileges  
42            are adversely affected by such delay to seek a court order compelling action by the  
43            agency or administrative law judge. An agency that is subject to Article 3 of this Chapter

1 and is not a board or commission has ~~90~~45 days from the day it receives the official  
2 record in a contested case from the Office of Administrative Hearings to make a final  
3 decision in the case. This time limit may be extended by the parties or, for good cause  
4 shown, by the agency for an additional period of up to ~~90~~30 days. An agency that is  
5 subject to Article 3 of this Chapter and is a board or commission has ~~90~~45 days from the  
6 day it receives the official record in a contested case from the Office of Administrative  
7 Hearings or ~~90~~45 days after its next regularly scheduled meeting, whichever is longer, to  
8 make a final decision in the case. This time limit may be extended by the parties or, for  
9 good cause shown, by the agency for an additional period of up to ~~90~~30 days. If an  
10 agency subject to Article 3 of this Chapter has not made a final decision within these time  
11 limits, the agency is considered to have adopted the administrative law judge's  
12 recommended decision as the agency's final decision. Failure of an agency subject to  
13 Article 3A of this Chapter to make a final decision within ~~180~~75 days of the close of the  
14 contested case hearing is justification for a person whose rights, duties, or privileges are  
15 adversely affected by the delay to seek a court order compelling action by the agency or,  
16 if the case was heard by an administrative law judge, by the administrative law judge."

17 Section 14.4. G.S. 150B-51 reads as rewritten:

18 "**§ 150B-51. Scope of review.**

19 (a) Initial Determination in Certain Cases. – In reviewing a final decision in a  
20 contested case in which an administrative law judge made a recommended decision, the  
21 court shall make ~~two-three~~ initial determinations. ~~determinations~~ as follows:

22 (1) First, the court shall determine whether the agency heard new evidence  
23 after receiving the recommended decision. If the court determines that  
24 the agency heard new evidence, the court shall reverse the decision or  
25 remand the case to the agency to enter a decision in accordance with the  
26 evidence in the official record.

27 (2) Second, if the agency did not adopt the recommended decision, the  
28 court shall determine whether the administrative law judge's findings of  
29 fact and conclusions of law are supported by substantial evidence  
30 admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the  
31 entire record. If the court determines that the agency failed to adhere to  
32 the administrative law judge's findings of fact and conclusions of law  
33 that are supported by substantial evidence, the court shall reverse the  
34 decision or remand the case to the agency to enter a decision in  
35 accordance with the evidence in the official record.

36 (3) Third, if the agency did not adopt the recommended decision, the court  
37 shall determine whether the agency's decision states the specific reasons  
38 why the agency did not adopt the recommended decision. If the court  
39 determines that the agency did not state specific reasons why it did not  
40 adopt a recommended decision, the court shall reverse the decision or  
41 remand the case to the agency to enter the specific reasons.

42 (b) Standard of Review. – After making the determinations, if any, required by  
43 subsection (a), the court reviewing a final decision may affirm the decision of the agency

1 or remand the case for further proceedings. It may also reverse or modify the agency's  
2 decision if the substantial rights of the petitioners may have been prejudiced because the  
3 agency's findings, inferences, conclusions, or decisions are:

- 4 (1) In violation of constitutional provisions;
- 5 (2) In excess of the statutory authority or jurisdiction of the agency;
- 6 (3) Made upon unlawful procedure;
- 7 (4) Affected by other error of law;
- 8 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
9 150B-30, or 150B-31 in view of the entire record as submitted; or
- 10 (6) Arbitrary or capricious."

11  
12 **PART XV. MISCELLANEOUS PROVISIONS; EFFECTIVE**  
13 **DATES**

14  
15 Section 15.1. G.S. 143-215(e) is repealed.

16 Section 15.2. The headings to the Parts of this act are a convenience to the  
17 reader and are for reference only. The headings do not expand, limit, or define the text of  
18 this act.

19 Section 15.3. If any section or provision of this act is declared unconstitutional  
20 or invalid by the courts, the unconstitutional or invalid section or provision does not  
21 affect the validity of this act as a whole or any part of this act other than the part declared  
22 to be unconstitutional or invalid.

23 Section 15.4. (a) G.S. 143-215.8B, as enacted by Section 8.2 of this act,  
24 becomes effective when this act becomes law, except that subdivisions (1) through (4) of  
25 G.S. 143-215.8B(l) become effective 1 January 1998. This act shall not be construed to  
26 invalidate the development and implementation of basinwide water quality management  
27 plans by the Environmental Management Commission and the Department of  
28 Environment, Health, and Natural Resources that has occurred prior to the date this act  
29 becomes effective.

30 (b) G.S. 90A-48.2, as enacted by Section 9.1 of this act, becomes effective 1 July  
31 1998.

32 (c) Except as otherwise provided, each section of this act is effective when it  
33 becomes law.

34 (d) Part XIV of this act becomes effective 1 October 1997, and applies to  
35 contested cases commenced on or after that date.