

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-254
HOUSE BILL 1312**

AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS, TO PROVIDE FOR THE ISSUANCE OF GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS UNDER ARTICLE 21 OF CHAPTER 143 OF THE GENERAL STATUTES AND THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES), AND TO EXTEND THE PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS.

Whereas, the 1997 General Assembly established moratoria on the construction or expansion of certain swine farms and on lagoons and animal waste management systems for certain swine farms; and

Whereas, among the purposes of these moratoria were to allow completion of certain studies related to swine farms and animal waste management systems; and

Whereas, the 1998 General Assembly extended these moratoria and established exceptions for animal waste management systems that meet certain performance standards; and

Whereas, the 1999 General Assembly further extended the moratoria so that moratoria have remained in effect continuously since 1 March 1997; and

Whereas, it appears that additional research and study is needed to identify and develop animal waste technologies that meet the performance standards established by the General Assembly; and

Whereas, on 25 July 2000, the Attorney General of North Carolina entered into an agreement with Smithfield Foods, Incorporated, and certain other companies; and

Whereas, this agreement commits those companies to work cooperatively to develop and implement animal waste management technologies that meet the performance standards established by the General Assembly; and

Whereas, the companies that are parties to this agreement constitute a significant portion of the swine production capacity of the State; and

Whereas, the companies that are parties to this agreement have agreed to provide substantial resources to assist the State in the development and implementation of animal waste management technologies that meet the performance standards established by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (a1) of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188 and Section 2.1 of S.L. 1999-329, reads as rewritten:

"(a1) There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an

animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on ~~1 July 2001, 1 September 2003~~. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217."

SECTION 2. Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L. 1998-188 and Section 2.2 of S.L. 1999-329, reads as rewritten:

"Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 July 2001, 1 September 2003~~, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective ~~1 July 2001, 1 September 2003~~, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

SECTION 3. G.S. 143-215.10C(a) reads as rewritten:

"(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining an individual permit ~~under Part 1 of this Article~~ or a general permit under this ~~Part~~ ~~Article~~. The Commission shall develop a system of individual and general permits for animal operations based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general ~~permit issued under this Part~~ permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit ~~issued under Part 1 of this Article~~ if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment."

SECTION 4. G.S. 143-215.10C(c) reads as rewritten:

"(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application. ~~If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.~~"

SECTION 5. Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than ~~November 1, 1997, 1 November 1997~~, and to terminate ~~1 July 2001, 1 September 2002~~, regarding the annual inspections of

animal operations that are subject to a permit under ~~Part 1A of~~ Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under ~~Part 1A of~~ Article 21 of Chapter 143 of the General Statutes in these three counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the three counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 6. Section 3.3 of S.L. 1999-329 reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit interim reports no later than 15 October 1999, 15 April 2000, 15 October 2000, 15 April 2001, 15 October 2001, and 15 April 2002 and shall submit a final report no later than ~~15 July 2001~~15 October 2002 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the ~~2001~~2003 General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals."

SECTION 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 8. This act becomes effective 30 June 2001.
In the General Assembly read three times and ratified this the 28th day of
June, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:34 p.m. this 29th day of June, 2001