

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-92
HOUSE BILL 1175**

AN ACT TO UPDATE THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING REQUIREMENTS FOR CONFINED ANIMAL FEEDING OPERATIONS (CAFOS).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10C reads as rewritten:

"§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities 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. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23(e)(3) (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall apply for an individual National Pollutant Discharge Elimination System (NPDES) permit or a general NPDES permit under this Article ~~within 90 days of notification by the Department that the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(e)(3) (1 July 2003)~~ and may not discharge into waters of the State except in compliance with an NPDES permit.

(b) An animal waste management system ~~that is not required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008)~~, shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm ~~or if required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.~~

(b1) An existing animal waste management system that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated in accordance with 40 Code of Federal Regulations § 412, as amended at 73 Federal Register 70418 (November 20, 2008), so that the animal operation served by the animal waste management system does not cause



pollution in waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. A new animal operation or dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 412.46, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated so that there is no discharge of pollutants to waters of the State.

(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.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal waste management plan for an animal operation shall include all of the following components:

- (1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.
- (2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.
- (3) Provisions that set forth acceptable methods of disposing of mortalities.
- (4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.
- (5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.
- (6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
- (7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.
- (8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator of a dry litter poultry facility that is not ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through

(8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July 2003) 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), for land application discharges, subdivision (4) of subsection (e) of this section.~~

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

- (1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part."

SECTION 2. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 2nd day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:27 p.m. this 11th day of June, 2009