

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 524

Short Title: Regulate Intensive Hog Operations.

(Public)

Sponsors: Representatives H. Hunter and Fitch.

Referred to: Agriculture, if favorable, Finance.

March 22, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE PUBLIC HEALTH BY REGULATING THE
3 MANAGEMENT AND DISPOSAL OF ANIMAL WASTE BY INTENSIVE HOG
4 OPERATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Effective January 1, 1996, the General Statutes are amended by
7 adding the following new Chapter to read:

8 **"CHAPTER 130C.**

9 **"MANAGEMENT AND DISPOSAL OF ANIMAL WASTE.**

10 **"ARTICLE 1.**

11 **"MANAGEMENT AND DISPOSAL OF WASTE**
12 **BY INTENSIVE HOG OPERATIONS.**

13 **"PART 1. GENERAL.**

14 **"§ 130C-1-1. Purpose.**

15 The purpose of this Chapter is to protect the rural environment and the health of rural
16 residents by establishing minimum qualifications, standards, and procedures for the
17 issuance of permits for intensive hog operations using liquid animal waste management
18 systems within the State and for the issuance of permits for land application sites within
19 the State. This Article provides management, operational, and maintenance procedures
20 necessary to prevent point source pollution and minimize nonpoint source pollution to the

1 surface and groundwaters of the State and control, to the degree practicable, the
2 generation of offensive odors produced by regulated intensive hog operations.

3 The siting and separation requirements set forth in this Article are intended to protect
4 water quality, to protect public health, and to abate odor. In order to minimize odor, the
5 policy is to encourage permittees to use chemical or biological additives or other best
6 management practices in the operation of liquid animal waste management systems.

7 This Article will help prevent conditions at intensive hog operations that are
8 detrimental to the health, safety, and welfare of nearby residents.

9 **"§ 130C-1-2. Applicability.**

10 The provisions of this Article are applicable to the operation of all intensive hog
11 operations operated in North Carolina.

12 **"§ 130C-1-3. Definitions.**

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

14 (1) 'Animal-feeding operations' means a lot, yard, corral, building, or other
15 areas where animals are confined, fed, and maintained for 45 days or
16 more in any 12-month period. Two or more animal-feeding operations
17 under common ownership or management are considered to be a single
18 operation if they are contiguous or use a common area or system for
19 waste disposal.

20 (2) 'Animal capacity' means the maximum number of animals that the
21 owner or operator will confine in an animal-feeding operation at one
22 time.

23 (3) 'Anaerobic lagoon' means an earthen impoundment designed and
24 operated to provide both long-term storage and partial treatment of
25 animal wastes from a confinement-feeding operation.

26 (4) 'Animal unit' means a unit of measurement used to determine the animal
27 capacity of an animal-feeding operation containing two or more
28 categories of animals. The animal unit capacity of an operation is
29 determined by multiplying the number of animals of each category by
30 the appropriate equivalency factor and summing the resulting totals for
31 animal categories contained in the operation.

32 Animal Unit Equivalency Factors

<u>Animal Species</u>	<u>Factor</u>
<u>Swine - over 55 lbs.</u>	<u>0.5</u>
<u>Swine - under 55 lbs.</u>	<u>0.05</u>

36 (5) 'Applicant' means any person who seeks a permit to establish, modify,
37 or maintain an Intensive Livestock Operation.

38 (6) 'Commission' means the Environmental Management Commission of
39 the Department of Environment, Health, and Natural Resources.

40 (7) 'Confined-hog operation' means any lot or facility where hogs have
41 been, are, or will be stabled or confined and fed or maintained and
42 where crops, vegetation, forage growth, or postharvest residues are not

- 1 sustained in the normal growing season over significant portions of the
2 lot or facility.
- 3 (8) 'Confinement-feeding operation' means totally roofed animal-feeding
4 operations in which wastes are stored or removed as a liquid or
5 semiliquid.
- 6 (9) 'Construction permit' means a written approval of the Department to
7 construct a waste control facility or part of one.
- 8 (10) 'DEM' means the Division of Environmental Management, Department
9 of Environment, Health, and Natural Resources.
- 10 (11) 'Department' means the Department of Environment, Health, and
11 Natural Resources.
- 12 (12) 'Director' means the Director of the Division of Environmental
13 Management, Department of Environment, Health, and Natural
14 Resources.
- 15 (13) 'Discontinued animal-feeding operation' means an animal-feeding
16 operation whose use has been discontinued, and the owner or operator
17 does not intend to resume its use for a period of 12 months or more.
- 18 (14) 'Earthen waste slurry storage basin' means an uncovered earthen
19 impoundment designed and operated to provide short-term storage of
20 wastes from a confinement-feeding operation. An impoundment or
21 basin is considered earthen unless the bottom and sidewalls are
22 completely covered with human-made materials (e.g. concrete, asphalt,
23 or synthetic liner).
- 24 (15) 'Formed waste storage tank' means a waste storage tank whose walls
25 and floor are constructed of materials such as concrete, concrete block,
26 wood, steel, or similar materials and used to store wastes from a
27 confinement-feeding operation. Formed-tanks may be located either
28 inside or outside the confinement feeding facilities.
- 29 (16) 'Freeboard' means the difference in height between the lowest point on
30 the lagoon dike and the level of wastes in the structure.
- 31 (17) 'Intensive hog operation or IHO' means any enclosure, pen, feedlot,
32 building, or group of buildings intended to be used or used to feed,
33 confine, or maintain swine, where their dietary needs are met primarily
34 by means other than grazing and with, at any time, a total of 200 or
35 more animal units present. The term includes confined-hog operation.
- 36 (18) 'Interested person' means any person residing in a community affected
37 by Department decisions, programs, policies, and activities, including
38 permitting activities relating to IHOs, that affects human health, the
39 environment, or the quality of life of persons living in the same
40 community. A 'community' is defined by the persons who live within a
41 'community'; the term should not necessarily imply generic, geographic,
42 or census boundaries.

- 1 (19) 'Liquid animal waste management system' means any system used for
2 the collection, storage, distribution, or disposal of animal waste in liquid
3 form generated by a confined-animal operation.
- 4 (20) 'Managing owner or managing operator' means any individual who
5 makes day-to-day decisions affecting the operation of an individual
6 IHO.
- 7 (21) 'Man-made waste drainage system' means a man-made drainage ditch,
8 flushing system, or other drainage device used for the purpose of
9 transporting wastes.
- 10 (22) 'Manure' means the feces, urine, litter, bedding, or feed waste from hog-
11 feeding operations.
- 12 (23) 'NPDES' means the National Pollution Discharge Elimination System,
13 pursuant to 33 U.S.C. § 1342.
- 14 (24) 'NPDES permit' means the permit to regulate and monitor discharge of
15 pollutants into the waters of the United States issued by the Department,
16 pursuant to G.S. 143-215.1.
- 17 (25) 'Operator' means any individual, partnership, corporation, or association
18 doing business in the State of North Carolina.
- 19 (26) 'Person' means any individual, corporation, partnership, association,
20 cooperative, State, municipality, commission, governmental agency or
21 subdivision, or other legal entity.
- 22 (27) 'Pollutant' means a substance adversely affecting water quality or public
23 health, including manure.
- 24 (28) 'Sewage lagoon' means an animal waste storage system, including
25 anaerobic lagoon, earthen waste slurry storage basin, or formed waste
26 storage tank.
- 27 (29) 'Site management plan' means a plan prepared by USDA Soil
28 Conservation Service, a North Carolina Soil and Water Conservation
29 District water quality technician, or a professional engineer registered in
30 the State of North Carolina that includes a detailed map of the land
31 application site showing all buffer zones, a description of the land use,
32 the crops grown on the site, and a land-use agreement if the site is not
33 owned by the permittee.
- 34 (30) 'Ten-year twenty-four-hour storm' means a storm of a 24-hour duration
35 which yields a total precipitation of a magnitude which has a probability
36 of recurring once every 10 years.
- 37 (31) 'Twenty-five-year twenty-four-hour storm' means a storm of a 24-hour
38 duration which yields a total precipitation of a magnitude which has a
39 probability of recurring once every 25 years.
- 40 (32) 'USDA' means the United States Department of Agriculture.
- 41 (33) 'Waste management plan' means a plan prepared by the USDA Soil
42 Conservation Service, a North Carolina Soil and Water Conservation
43 District water quality technician, or a professional engineer registered in

1 the State of North Carolina detailing the management and disposal of
2 liquid wastes generated in a confined-hog farm operation.

3 (34) 'Waters of the State' means all creeks, streams, rivers, lakes, marshes,
4 swamps, ponds, watercourses, waterways, wells, springs, irrigation
5 systems, drainage systems, and all other bodies or accumulations of
6 water, surface, natural or artificial, public or private, which are
7 contained within, flow through, or border upon this State or any portion
8 of this State. This definition includes waters of the United States as
9 defined by Clean Water Act regulations, 40 C.F.R. § 122.2.

10 **"§ 130C-1-4. Administration and interpretation.**

11 (a) The Department shall adopt rules to implement this Article in accordance with
12 Chapter 150B of the General Statutes.

13 (b) In interpreting and applying the provisions of this Article, the Department shall
14 apply the minimum requirements, except where maximum requirements are expressly
15 stated.

16 (c) The requirements of this Article are minimum requirements for the
17 management of IHOs. The Department may adopt stricter rules as necessary to meet the
18 intent of this Article. All rules adopted pursuant to this Article shall supersede any
19 previously adopted rules affecting IHOs.

20 (d) Any interested person may challenge rules adopted by the Department pursuant
21 to this Article as provided in Chapter 150B of the General Statutes.

22 (e) Whenever any provision of this Article overlaps or contradicts a local
23 regulation, the local regulation shall govern if it imposes higher environmental protection
24 standards, unless it is the clear intent of this Article that only this Article shall control.

25 (f) It is not intended that any provision of this Article shall restrict or impair the
26 right of any private or public person to bring any legal or equitable action for redress
27 against nuisances, hazards, or injuries to persons or property.

28 (g) Failure of the Department to observe or recognize conditions which violate the
29 intent and purpose of this Article, or to deny an IHO permit applied for under this Article,
30 shall not relieve the IHO owner from responsibility for the condition or damages
31 resulting from the violation and shall not result in the county, its officers, or agents being
32 responsible for conditions or damages resulting from the violation.

33 **"PART 2. PERMIT AND EDUCATION REQUIREMENTS.**

34 **"§ 130C-1-5. Permit requirements.**

35 (a) No person shall initiate the construction, expansion, or operation of any IHO
36 without first having obtained a permit from the Department.

37 (b) All IHOs operating as of the effective date of this Chapter shall apply for a
38 permit from the Department within one year of the effective date of this Chapter in order
39 to continue operation.

40 (c) IHO owners shall take all reasonable measures to protect the health,
41 environment, and human quality of life from adverse consequences of the operation of
42 IHOs.

1 (d) The Department shall review all existing and proposed IHOs to determine if
2 the IHOs must apply for a NPDES permit. A decision by the Department to require or
3 not require an application for a NPDES permit can be appealed by the applicant or any
4 interested person pursuant to Chapter 150B of the General Statutes.

5 (e) A new animal-feeding operation or existing operation planning expansion shall
6 apply for an operation permit at least 180 days before the new or expanded facility is
7 scheduled to begin operation.

8 **"§ 130C-1-6. Permit application.**

9 (a) To obtain a permit, an IHO shall submit a completed application to the
10 Department on any form as the Department may require.

11 (b) The application shall include all of the following:

12 (1) An engineering report, design, plans and specifications, and related
13 design information covering all proposed waste control facilities.
14 Design plans submitted to the Department shall be prepared by a
15 professional engineer registered in this State or by the personnel of the
16 USDA Soil Conservation Service. Designs and waste management
17 plans shall be in accordance with the criteria listed in this Article and
18 the following USDA Soil Conservation Service technical publications:

19 a. Field Office Technical Guide,

20 b. Annual Waste Management Field Manual,

21 c. Technical Note 716, Lining Requirements, and

22 d. Technical Note 102, Supplementing Nutrient and Pest
23 Management Practice Standards.

24 (2) USDA Agriculture Stabilization and Conservation Service aerial photos
25 showing the location of existing and proposed animal-feeding
26 operations and waste control systems, and the location of any
27 neighboring property or public use areas other than roads located within
28 one mile of the operation.

29 (3) Information on the amounts and location of the land areas on which
30 wastes will be disposed.

31 (4) Soil boring data for anaerobic lagoons, earthen waste slurry storage
32 basins, open feedlot runoff storage basins, and other earthen waste
33 storage structures.

34 (5) Plans for odor control, disposal of dead animals, and vermin control.

35 (6) The name, address, and description of similar facilities partly or wholly
36 operated or owned by the applicant or an entity such as a corporation,
37 subsidiary of the applicant, or the parent company of the applicant, or
38 affiliate of the company, that are owned by the applicant or that owns
39 the applicant. The information shall also include any violations cited
40 within the last 10 years by federal, State, regional, or local regulatory
41 agencies, approved plans for correcting such violations, and evidence
42 that corrections have occurred or are occurring.

43 **"§ 130C-1-7. Notice of application.**

1 (a) Prior to submission of an application to construct or operate an IHO, or prior to
2 submission of an application to modify any existing IHO, the applicant shall cause to be
3 published in a newspaper having general circulation, in each county where the operation
4 is to be located, in the legal notices section, a public notice of the application. The
5 Department shall be provided a copy of this notice. All notices shall be published at least
6 weekly for two consecutive weeks in a form prescribed by the Department. The notice
7 shall call upon all interested persons having questions or objections pertaining to the
8 application to file their questions or objections with the Department in writing, including
9 their names and addresses. Proof of publication shall be submitted to the Department
10 with the permit application. Publication of notices shall be at the applicant's expense and
11 shall provide the following information:

12 (1) The type of facility to be constructed or operated;

13 (2) The type of waste to be generated, and a description of the waste
14 treatment, handling, or disposal processes; and

15 (3) The legal description, including township and road and street
16 description, indicating the location of all properties to be used in the
17 treatment, handling, or disposal of waste.

18 (b) The Department shall provide a copy of the public notice or similar written
19 notification of the operation to the county zoning authority or, if located within an area
20 zoned by a city, the city zoning authority.

21 (c) Any interested person shall have 90 days from the date of first publication to
22 submit written comments to the Department.

23 **"§ 130C-1-8. Permit review and public hearings.**

24 (a) Upon receipt of an application, the Department shall review the application,
25 determine if all required information has been submitted, and contact the applicant,
26 individual, or agency providing design assistance if additional information is needed. If
27 necessary, a departmental field office shall conduct an on-site inspection. The
28 Department shall review proposed waste controls for compliance with the Department's
29 rules and design standards, Soil Conservation Service standards and specifications, and
30 other applicable criteria.

31 (b) Should a hearing be deemed necessary by the Department, or in the event the
32 Department desires a hearing, the Department shall schedule a public hearing and shall
33 by certified mail, return receipt requested, notify the applicant and all persons who have
34 submitted comments of the date, time, and place of the public hearing.

35 (c) If the Department determines that the proposed waste controls do not meet the
36 statutory and regulatory requirements, the operation will be asked to modify its plans and
37 permit applications. Once all the Department's requirements are met, a permit will be
38 issued.

39 (d) If a final permit is issued, the applicant or any interested party has 30 days to
40 appeal the decision pursuant to Chapter 150B of the General Statutes.

41 (e) If a final permit is denied, the Department shall provide to the applicant a
42 written statement setting out the basis for the denial. The applicant has 30 days from the

1 date of the denial notice to appeal the denial pursuant to Chapter 150B of the General
2 Statutes.

3 (f) The Department shall issue a notice of its decision to the applicant and any
4 interested party that submitted written comments pursuant to this section.

5 **"§ 130C-1-9. Permit contents.**

6 (a) An operation permit shall describe the minimum waste control requirements an
7 animal-feeding operation must follow. The permit shall also list monitoring and
8 reporting requirements, acceptable methods for disposing stored wastes, as well as other
9 conditions the Department determines necessary to prevent water pollution.

10 (b) An operation permit is issued up to five years but may be revoked, suspended,
11 or modified by the Department if the permit terms are violated or unlawful waste
12 discharges occur.

13 (c) When necessary to comply with a present standard or a standard which must be
14 met at a future date, an operation permit shall include a schedule for modification of the
15 permitted facility to meet the standard. A compliance schedule shall not exceed two
16 years from its date of issuance. The schedule of modification must be approved by the
17 Department. The schedule shall not relieve the permittee of the duty to obtain a permit.

18 **"§ 130C-1-10. Permit modification, suspension, or revocation.**

19 (a) The operator shall notify and describe to the Department in writing prior to any
20 change in operational procedures of the permitted facility, including, but not limited to,
21 the following:

22 (1) Change in ownership and control of the facility;

23 (2) Increase in the number of confined animals greater than ten percent
24 (10%) or more of the existing permitted confined-animal operation;

25 (3) Change in land application sites; or

26 (4) Change in waste treatment, handling, or disposal.

27 (b) Any changes in procedures as described in subsection (a) of this section shall
28 require a permit modification. The Department in its discretion may require the operator
29 to modify its permit with regard to waste treatment, handling, or disposal.

30 (c) All permit modifications shall follow the requirements of this Article.

31 (d) The Department may in its discretion require the operator to provide
32 construction plans and specifications, amended plans of operation, or any other
33 information required by this Article.

34 (e) The Department may modify, suspend, or revoke in whole or in part any
35 operation permit for cause. Cause for modification, suspension, or revocation of a permit
36 may include the following:

37 (1) Violation of any term or condition of the permit;

38 (2) Obtaining a permit by misrepresentation of fact or failure to disclose
39 fully all material facts;

40 (3) A change in any condition that requires either a temporary or permanent
41 reduction or elimination of the permitted discharge;

1 (4) Failure to timely submit the records and information that the
2 Department requires in order to assure compliance with the operation
3 and discharge conditions of the permit; or

4 (5) Violation of this Article or any State or federal employment safety,
5 public health, and environmental statute or regulation.

6 **"§ 130C-1-11. Permit renewals.**

7 Requests for permit renewals are to be submitted to the Director at least 180 days
8 prior to expiration unless revoked in accordance with this Article. Requests must be
9 submitted with a processing fee as required under G.S. 130C-1-12 in the form of a check
10 or money order made payable to the Department of Environment, Health, and Natural
11 Resources. All applications are incomplete until required processing fees are received
12 and will be returned to the applicant.

13 **"§ 130C-1-12. Fees.**

14 (a) For every application for a new or revised animal waste disposal permit under
15 this Article, a nonrefundable application processing fee of no less than four hundred
16 dollars (\$400.00) and no more than eight hundred dollars (\$800.00) shall be submitted at
17 the time of application. The exact amount of the fee shall be determined by the
18 Department by rule, based on the size of the IHO.

19 (b) Each permit or renewal application is incomplete until the application
20 processing fee is received.

21 (c) No processing fee will be charged for modification of unexpired permits when
22 the modifications are initiated by the Director.

23 (d) A processing fee of fifty dollars (\$50.00) will be charged for name changes.

24 (e) A full application processing fee will be charged for all modifications except
25 for name changes.

26 (f) An annual fee for administering and compliance monitoring shall be charged in
27 each year of the term of every renewable permit in the amount of no less than four
28 hundred dollars (\$400.00) and no more than eight hundred dollars (\$800.00) shall be
29 submitted at the time of application. The exact amount of the fee shall be determined by
30 the Department by rule, based on the size of the IHO.

31 (g) Collection of annual fees shall begin on the effective date of this Chapter.

32 (h) A person with only one permit will be billed annually on an anniversary date to
33 be determined by the Division.

34 (i) A person with multiple permits may have annual administering and
35 compliance-monitoring fees consolidated into one annual bill.

36 (j) A change in the facility which changes the annual fee will result in the revised
37 annual fee being billed in all remaining whole permit years. The amount of the fee shall
38 be no less than four hundred dollars (\$400.00) and no more than eight hundred dollars
39 (\$800.00) shall be submitted at the time of application. The exact amount of the fee shall
40 be determined by the Department by rule, based on the size of the IHO.

41 (1) Failure to pay an annual administering and compliance-monitoring fee
42 within 30 days after being billed may cause the Division to initiate
43 action to revoke the permit.

1 (2) All funds collected in fees pursuant to this section shall be transferred
2 into the Animal Waste Disposal Best Management Practices Fund.

3 **"§ 130C-1-13. Educational requirements.**

4 (a) Commencing six months from the effective date of this Article, applicants for
5 permits and all managing owners or managing operators of the proposed operation must
6 provide certification of satisfactory completion of formal education or training in the
7 areas of waste management and odor control. Proof of certification of a minimum of four
8 hours of individualized training and education shall be submitted with the permit
9 application or within one year of the effective date of the issued permit. Appropriate
10 curricula and course content must be developed under the supervision of the North
11 Carolina State Cooperative Extension Service which shall provide certification to the
12 Department.

13 (b) Commencing one year from the effective date of this Article, all managing
14 owners or managing operators of all permitted liquid animal waste disposal systems
15 subject to this Article, which have been in operation for no less than 18 months, must
16 provide certification of satisfactory completion of annual refresher training in the areas of
17 waste management and odor control as described in and in addition to the educational
18 requirements provided in subsection (a) of this section. Appropriate curricula and course
19 content shall be developed under the supervision of the North Carolina State Cooperative
20 Extension Service which shall provide certification to the Department.

21 (c) Failure to obtain the prerequisite and annual training and education as provided
22 in this section shall be deemed a violation of this Article.

23 **"PART 3. REGULATION OF INTENSIVE HOG OPERATIONS.**

24 **"§ 130C-1-14. Minimum requirements for storage of waste.**

25 (a) Confinement-feeding operations shall collect and store all wastes produced in
26 the operation between periods of waste disposal and dispose of the stored wastes by land
27 application unless the Department determines that a NPDES permit is required.
28 Additional storage shall be provided if precipitation or wastes from other sources can
29 enter waste control structures.

30 (1) Wastes shall be removed from the control structures as needed to
31 prevent overflow or discharge. For earthen waste control structures
32 (anaerobic lagoons, earthen waste slurry storage basins, and other
33 earthen waste storage basins), wastes shall be removed from the
34 structures as needed to maintain a minimum of two feet of freeboard,
35 unless additional freeboard is necessary to protect the structure or
36 prevent waste discharge.

37 (2) Confinement-feeding operations shall not dispose of wastes during
38 periods when disposal is impossible due to adverse weather conditions,
39 lack of suitable disposal areas, etc., to ensure that adequate capacity
40 exists to store all wastes produced. The Department may approve other
41 methods of disposal as long as they are feasible and do not pose a threat
42 to public health or the environment.

1 (b) The direct discharge of wastes from confinement-feeding operations into
2 waters of the State is prohibited. This includes discharge to a publicly owned lake,
3 sinkhole, an agricultural drainage well, or to ditches or tile lines that drain into waters of
4 the State.

5 (c) All wastes removed from a confinement-feeding operation or its waste control
6 facilities shall be disposed on land in a manner that does not cause surface water or
7 groundwater pollution. The Department shall adopt rules, not inconsistent with this
8 Article, to provide general requirements on how and when to dispose of waste.

9 (d) The Department may require a greater level of waste control from a
10 confinement-feeding operation if it is determined following an on-site inspection that the
11 minimum level of waste control is inadequate to prevent water pollution.

12 A construction permit may be issued only after the Department has reviewed the plans
13 and determined that the system will comply with the applicable State and federal laws
14 and the Department's rules.

15 (e) Confinement buildings, settling basins, holding ponds, and other liquid animal
16 waste containment structures shall not be constructed within 2,500 feet of the adjoining
17 property unless the adjoining property owner consents by written agreement, notarized
18 and recorded with the county register of deeds office. Confined-animal operations
19 existing as of the effective date of this Article and proposing to construct a liquid animal
20 waste containment structure in order to reduce waste/wastewater runoff to waters of the
21 State may be considered exempt from the buffer distances by the Director. These buffer
22 distances do not apply to confinement buildings, settling basins, holding ponds, or other
23 liquid animal waste containment structures existing as of the effective date of this Article;
24 nor do they apply to existing structures when a liquid animal waste permit modification is
25 required due to a change in ownership.

26 (f) The subsurface investigation for earthen holding ponds and treatment lagoons
27 suitability and liner requirements may consist of auger holes, dozer pits, or backhoe pits
28 that should extend at least two feet below the planned bottom of the excavation. In those
29 situations where this depth is not practical in the initial on-site subsurface investigation,
30 the applicant shall provide additional subsurface investigation documentation to the
31 Department.

32 (g) The waste management plan shall be developed in accordance with the USDA
33 Soil Conservation Service Technical Guide and shall address the timing of land
34 application of wastes with respect to nutrient uptake cycle of the vegetation found on the
35 land application site and, to the extent practicable, shall include measures to minimize
36 off-site obnoxious and offensive odors.

37 (h) There is a minimum separation distance requirement to neighboring property
38 or public use areas for the construction of new or the expansion of existing anaerobic
39 lagoons and earthen waste slurry storage basins. The separation distance is measured
40 from the closest edge of the lagoon or basin to the neighbor's property.

41 (i) Lagoons or earthen waste slurry storage basins used as part of a confinement
42 feeding operation shall be located at least 3,500 feet from land not owned by the
43 operation and from public-use areas other than roads if the operation has a capacity of

1 more than 625,000 pounds live animal weight. However, lagoons or earthen waste slurry
2 storage basins may be constructed closer to a neighbor's property if the neighbor consents
3 by written agreement, notarized and recorded with the county register of deeds office.
4 These buffer distances do not apply to lagoons or earthen waste slurry storage basins
5 existing as of the effective date of this Chapter; nor do they apply to existing structures
6 when a liquid animal waste permit modification is required due to a change in ownership.

7 (j) Hog waste lagoons and hog confinement buildings shall not be placed in any
8 identified flood plain, or any wetlands as defined by the United States Army Corps of
9 Engineers.

10 (k) Hog waste lagoons shall not be placed within 250 feet of the waters of the
11 State. There shall be a strip of ground cover vegetation, such as alfalfa or lespedeza, at
12 least 100 feet wide between the waste lagoons and the waters of the State.

13 (l) Hog waste lagoons shall at least comply with the requirements for livestock
14 waste lagoons of the USDA Soil Conservation Service.

15 (m) All vehicles used to transport livestock waste and livestock shall be leakproof.

16 (n) IHOs shall be limited in the amount of livestock allowed to be on site to the
17 amount the approved waste management plan indicates, according to scientifically
18 supported standards, can be disposed of without damage to the environment, health, or
19 human quality of life.

20 (o) No IHO shall be located within three-fourths of a mile of 10 or more
21 contiguous existing-dwelling lots or residential lots of two acres or less in size. IHOs
22 may be constructed closer to these neighbors' property if all of the neighbors within
23 three-fourths of a mile consent to the waiving of these requirements by written
24 agreement, notarized and recorded with the county register of deeds office. This
25 requirement does not apply to IHOs existing as of the effective date of this Article; nor
26 does it apply to existing structures when a liquid animal waste permit modification is
27 required due to a change in ownership.

28 (p) No IHO shall be closer than 1,000 feet from any primary street, road, or
29 highway as defined by the North Carolina Department of Transportation. This
30 requirement does not apply to IHOs existing as of the effective date of this Article; nor
31 does it apply to existing structures when a liquid animal waste permit modification is
32 required due to a change in ownership.

33 (q) No IHO shall be closer than 500 feet away from any secondary street, road, or
34 highway as defined by the North Carolina Department of Transportation. This
35 requirement does not apply to IHOs existing as of the effective date of this Article; nor
36 does it apply to existing structures when a liquid animal waste permit modification is
37 required due to a change in ownership.

38 **§ 130C-1-15. Waste disposal.**

39 (a) All IHOs shall dispose of wastes in a manner that will not pollute surface water
40 or groundwater.

41 (b) All permitted facilities must have a waste management plan for the operation
42 and a site management plan for each land application site prepared by a professional
43 engineer registered in the State of North Carolina, the USDA Soil Conservation Service,

1 or a water quality technician of the North Carolina Soil and Water Conservation District
2 and approved by the Department. The Department shall require proof of land ownership
3 or of contractual agreements for use of the land as a land application site. This plan shall
4 include the following information:

- 5 (1) Cropping system schedule,
- 6 (2) Harvesting schedule,
- 7 (3) Frequency of nitrogen application,
- 8 (4) Projected nitrogen removal by crops, and
- 9 (5) Other projected nitrogen losses (volatilization, surface runoff, leaching,
10 etc.).

11 (c) All permittees with permits issued prior to the effective date of this Chapter
12 that do not have a waste management plan approved by the Department or are applying
13 waste/wastewater on sites for which a site management plan has not been approved by
14 the Department shall submit a waste management plan and site management plans for
15 each site in compliance with this Article no later than one year from the effective date of
16 this Article. Requests of time extensions may be approved at the Department's discretion.

17 (d) Irrigation of fields with lagoon wastewater or application to fields of livestock
18 waste or waste lagoon sludge shall not occur within 1,000 feet of neighboring property.
19 Irrigation of fields within 1,000 feet of neighboring property may be undertaken if the
20 neighbors waive these requirements by written agreement, notarized and recorded with
21 the county register of deeds office.

22 (e) Irrigation of fields with lagoon wastewater and application to fields of
23 livestock waste or waste lagoon sludge shall not occur within 250 feet of the waters of the
24 State. Application of waste/wastewater shall not be made within 500 feet of outstanding
25 resource waters as defined by the Department. Buffer distances for streams, ponds, and
26 lakes shall be measured from the ordinary high watermark. The Department may require
27 additional buffer distances deemed necessary to protect the waters of the State.

28 (f) There shall be a strip of ground cover vegetation, such as alfalfa or lespedeza,
29 at least 100 feet wide between the fields irrigated with lagoon wastewater and the waters
30 of the State.

31 (g) Application of waste/wastewater shall not be made in areas where the land
32 application of waste/wastewater is prohibited by the Department's rules for the protection
33 of public water supplies.

34 (h) Records shall be kept by the IHO of all waste/wastewater applications. These
35 records shall be kept in sufficient detail to determine the application rate. A log shall be
36 kept of all land applied to waste/wastewater. The log shall include the date, weight, or
37 volume, destination, and acreage over which the load was spread. All records and logs
38 shall be kept at the facility and provided to the Department in monthly reports.

39 (i) A representative sample of the waste/wastewater to be land applied shall be
40 collected monthly and analyzed for the following parameters: pH, Total Nitrogen,
41 Ammonium, Potassium, Total Phosphorus, Arsenic, Copper, and total suspended solids.
42 The Department may require more frequent testing deemed necessary to protect the
43 waters of the State.

(j) The soils of each field where liquid animal waste has been land applied shall be sampled and analyzed monthly prior to the application of the wastes for the following parameters: pH, Potassium, Phosphorus, Nitrates, Arsenic, and Copper.

(k) Methods and timing of the sample and analysis described in this section shall be in accordance with the North Carolina State Cooperative Extension Service Guidelines.

(l) Monthly reports for the previous month shall be submitted to the Department prior to the thirtieth day of each month and shall include the following:

- (1) Waste/wastewater analyses required under this section,
- (2) Soil analyses required under this section,
- (3) Locations, volumes, and nitrogen application rates for previous month,
- (4) Methods of application, and
- (5) Types of crops grown on each land application site

(m) Reports must be submitted on forms provided by the Department.

(n) Waste Application Rates:

- (1) Annual reports for the previous calendar year shall be submitted to the Department prior to May 30 of each year. The annual report shall include the following: annual volumes, nitrogen application rates, and waste application locations for the previous year; methods of application; types and yields of crops grown on each land application site. Reports shall be submitted on forms provided by the Department.
- (2) Nitrogen application from all sources including animal wastes, legumes, and commercial fertilizers should not exceed the annual nitrogen requirement of the crop being grown.
- (3) The following nitrogen loading rates shall be used, and the total annual nitrogen application rates shall not exceed the use requirement of the crops that are grown:

CROP NUTRIENT UTILIZATION

<u>Crop</u>	<u>Yield</u>	<u>Nitrogen - lb/acre</u>
<u>Corn</u>	<u>80 bu</u>	<u>121</u>
		<u>100 bu</u> <u>160</u>
		<u>150 bu</u> <u>185</u>
		<u>180 bu</u> <u>240</u>
<u>Corn Silage</u>		<u>16 tons</u> <u>130</u>
		<u>32 tons</u> <u>200</u>
<u>Soybeans</u>	<u>30 bu</u>	<u>123</u>
		<u>40 bu</u> <u>180</u>
		<u>50 bu</u> <u>257</u>
		<u>60 bu</u> <u>336</u>

1			
2	<u>Grain Sorghum</u>	<u>4 tons</u>	<u>250</u>
3			
4	<u>Wheat 40 bu</u> <u>70</u>		
5		<u>60 bu</u>	<u>125</u>
6		<u>80 bu</u>	<u>186</u>
7			
8	<u>Oats 80 bu</u> <u>75</u>		
9		<u>100 bu</u>	<u>150</u>
10			
11	<u>Barley 65 bu</u> <u>74</u>		
12		<u>100 bu</u>	<u>150</u>
13			
14	<u>Alfalfa 4 tons</u> <u>180</u>		
15		<u>8 tons</u>	<u>450</u>
16			
17	<u>Orchardgrass</u>	<u>6 tons</u>	<u>300</u>
18			
19	<u>Bromegrass</u>	<u>5 tons</u>	<u>166</u>
20			
21	<u>Tall Fescue</u>	<u>3.5 tons</u>	<u>135</u>
22			
23	<u>Blue Grass</u>	<u>3 tons</u>	<u>200</u>
24			
25	<u>Coastal Bermuda</u>		
26	<u>Grass 4 tons</u> <u>225</u>		
27		<u>10 tons</u>	<u>535</u>
28			
29	<u>Clover Grass</u>	<u>4.5 tons</u>	<u>185</u>
30		<u>6.0 tons</u>	<u>300</u>
31			
32	<u>Sugar Beets</u>	<u>30 tons</u>	<u>275</u>
33			
34	<u>Rice 2.25 tons</u> <u>110</u>		
35		<u>3.5 tons</u>	<u>112</u>
36			
37	<u>Timothy 4 tons</u> <u>150</u>		
38			
39	<u>Pangola Grass</u>	<u>12 tons</u>	<u>299</u>
40			
41	<u>Sorghum-Sudan</u>		
42	<u>Grass 8 tons</u> <u>319</u>		
43			

1 Total nitrogen refers to the total amount of nitrogen contained in animal waste. Available
2 nitrogen refers to the portion of the nitrogen readily available to crops.

3 (4) During the first crop season following waste application, the available
4 nitrogen content is:

5 a. Seventy-five percent (75%) of the total nitrogen content of the
6 applied waste if the waste is injected or incorporated into the soil
7 immediately following application; or

8 b. Fifty percent (50%) of the total nitrogen content of the applied
9 waste if the waste is surface-applied and allowed to dry before
10 incorporation into the soil.

11 (5) During the second crop season following waste application, the
12 available nitrogen carryover from the waste applied during the first crop
13 season is twelve and five-tenths percent (12.5%) of the original nitrogen
14 content of the waste.

15 (6) During the third crop season following waste application, the available
16 nitrogen carryover from the waste applied during the first crop season is
17 seven percent (7%) of the original nitrogen content of the waste.

18 (7) After more than three crop seasons, no more carryover of nitrogen from
19 the waste applied during the first crop season is assumed.

20 (8) To minimize phosphorus movement to surface waters, phosphorus shall
21 be applied at rates equivalent to crop uptake when soil tests indicate
22 adequate phosphorus levels (between 40 and 60 pounds per acre or
23 equivalent to 20-30 parts per million).

24 (9) Land application of waste/wastewater shall not be undertaken when soil
25 is saturated, frozen, covered with ice or snow, or when significant
26 precipitation is reasonably anticipated in the next 24 hours.

27 (10) Fields and other areas in the 50-year floodplain shall not be irrigated
28 with lagoon wastewater nor used as the site for disposal of other
29 noncomposted livestock waste and waste lagoon sludge.

30 (11) Waste disposal on tilled land with greater than ten percent (10%) slopes
31 shall be limited to areas where erosion is adequately controlled.
32 Injection or incorporation of wastes is recommended and should be
33 done in a manner that maintains an adequate level of erosion control.

34 (12) Waste/wastewater shall not be applied on slopes with a grade more than
35 fifteen percent (15%) if in any manner the slope will allow waste to
36 enter waters of the State or to run into adjacent property without the
37 written consent of the affected adjacent property owner.

38 (o) A decision by the Department to reduce the amount of livestock allowed at an
39 IHO may be appealed pursuant to Chapter 150B of the General Statutes.

40 (p) The Department shall receive, investigate, and as appropriate, refer for
41 appropriate action by other offices and agencies of local, State, and federal government
42 citizen complaints regarding odor, runoff, and groundwater contamination from the
43 IHOs.

"§ 130C-1-16. Facility closure.

(a) If a permitted confined animal operation using a liquid waste management system ceases operation, the permittee shall submit to the Department a closure plan for the liquid waste system storage/treatment structure(s) within 60 days of the final day of operation. This plan shall be prepared by the USDA Soil Conservation Service, a North Carolina Soil and Water Conservation District water quality technician, or a professional engineer registered in the State of North Carolina.

(b) All wastes from the feeding operation and its waste control system must be removed and disposed on land as soon as practical but not more than six months after closure.

(c) In order to adequately guarantee the proper closure and postclosure and care of livestock sewage lagoons, any party or person that desires to construct or maintain a sewage lagoon must file with the Department a surety bond or cash in lieu thereof in the following amounts - twenty-five thousand dollars (\$25,000) for each acre foot of capacity over 10 acre feet. No bond or cash deposit is required for lagoons of 10 acre feet or less. The principal amount of the bond or the cash deposited in lieu of bond may be expended by the Department to consummate the proper closure or postclosure of any abandoned or unused livestock sewage lagoons as provided in this Article. Any unexpended sums remaining on deposit after the cleanup has been completed shall be refunded to the party or the party making the deposit.

"§ 130C-1-17. Transfer of legal responsibilities or title.

If legal responsibility for a permitted animal-feeding operation and its associated waste control system is transferred, the person to whom legal responsibility is transferred shall be subject to all terms and conditions of the permit and of this Article. The person to whom the permit was issued shall notify the Department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the Department, the person to whom legal responsibility is transferred shall submit to the Department all information needed to modify the permit to reflect the transfer of legal responsibility.

"§ 130C-1-18. Inspections and enforcement procedures.

(a) The Department shall at least annually, including an inspection during July or August, inspect all IHO sites for which permits have been issued. The inspectors are to determine whether the activity is being conducted in accordance with the livestock waste management, odor control, dead animal, and vermin control plans, and to determine whether the measures required in the plans are effective in preventing adverse consequences for public health, the environment, or human quality of life. The Department has the authority without prior notice to the IHO owner to collect samples of livestock waste lagoon water which is being field-applied. The Department may collect subsurface soil samples from the IHO tract. Such samples may be analyzed by offices certified by the Department to have requisite expertise.

(b) If through inspection it is determined that a person engaged in construction, expansion, and/or operation of an IHO has failed to comply with an approved plan, a Notice of Violation shall be served upon that person by registered or certified mail. The

1 notice shall set forth the measures necessary to achieve compliance with the plan, specify
2 a reasonable time period within which such measures must be completed, and warn that
3 failure to correct the violation within the time period will result in the assessment of a
4 civil penalty or other enforcement action. If the person engaged in IHO construction,
5 expansion, or operation fails to comply within the time specified, enforcement action
6 shall be initiated.

7 (c) The Department shall conduct such investigations as are reasonably necessary
8 to carry out its duties as prescribed in this Article. For this purpose, the Department may
9 enter at reasonable times upon any property, public or private, for the purpose of
10 investigating and inspecting the sites of any IHO. No person shall refuse entry or access
11 to any of the Department's authorized representative or agent who requests entry for
12 purposes of inspection, and who presents appropriate credentials. Nor shall any person
13 obstruct, hamper, or interfere with the representative or agent while in the process of
14 carrying out his or her official duties.

15 (d) The Department may require written statements, or the filing of reports under
16 oath, with respect to pertinent questions relating to IHO construction, expansion, and
17 operation.

18 (e) The holder of the IHO permit shall notify the Department when the permitted
19 activity is to begin.

20 (f) The owner of each IHO regulated under this Article shall be responsible to
21 report the IHO inventory of livestock, with indication of approximate live weight, to the
22 Department within five working days of January 15th, April 15th, July 15th, and October
23 15th.

24 (g) When the Department determines that competently conducted research clearly
25 indicates that an approved waste management plan of an IHO either underestimates or
26 overestimates the amount of livestock the waste of which can be accommodated without
27 adverse environmental, or quality of human life consequences at an IHO, the Department
28 may communicate to the IHO permit holders indicated increases or decreases in the
29 amount of livestock allowed to be located at the IHO. The IHO to which decreases in
30 allowable livestock have been communicated shall have six months from the date of
31 notice to reduce the amount of livestock at the site to the new limit or obtain approval of
32 a new waste management plan providing for disposal of the waste of the previously
33 indicated amount of livestock without adverse health, environmental, or human quality of
34 life consequences.

35 (h) A decision by the Department to reduce the amount of livestock allowed at an
36 IHO may be appealed pursuant to Chapter 150B of the General Statutes.

37 (i) The Department shall receive, investigate, and as appropriate, refer for
38 appropriate action by other offices and agencies of local, State, and federal government
39 citizen complaints regarding odor, runoff, and groundwater contamination from the
40 IHOs.

41 **"§ 130C-1-19. Groundwater contamination.**

42 (a) The Department and the local health departments shall test local wells upon the
43 well owner's request even though the wells may not meet State specifications. The

1 Department shall not use the fact that a local well may not meet State specifications as a
2 means to dissuade the well owner from requesting testing.

3 (b) Upon receiving proof that persons living near IHOs have wells contaminated
4 with fecal indicator bacteria or nitrate levels over 8.0 mg/l, the Department shall conduct
5 an investigation to determine the source of the contamination. The Department shall drill
6 monitoring wells in and around the irrigated fields and near lagoons in such a manner as
7 will show whether the IHO is the source of the groundwater contamination. The
8 Department shall conduct weekly tests for fecal indicator bacteria and nitrates in these
9 wells to see if the IHO is the source of the contamination. The Department shall also test
10 nearby ditches, streams, and other waters of the State to see if runoff from the irrigated
11 fields may be contaminating these water bodies. The Department shall conduct water
12 quality testing that can demonstrate contamination. These tests can include the following
13 parameters: fecal indicator bacteria; total phosphorus; total nitrogen; dissolved oxygen;
14 biochemical oxygen demand; total suspended solids; pH; chlorophyll a; and nitrates.

15 (c) The Department shall also test the soil in the irrigated fields for nitrates at foot
16 long intervals to a depth of six feet.

17 (d) The Department shall also place lysimeters in the soil in the irrigation field and
18 near the lagoon in order to test the nitrate levels in the groundwater. These tests shall be
19 conducted weekly.

20 (e) The results of all tests conducted pursuant to this section are public
21 information.

22 (f) If the IHO is found to be the source of the contamination, the IHO shall pay the
23 costs of the investigation, including the monitoring wells, soil and surface and
24 groundwater testing, and the Department's administrative costs.

25 (g) If the IHO is found to be the source of the groundwater contamination, the
26 Department shall declare the IHO an imminent health hazard. The IHO shall remedy the
27 situation by stopping or reducing irrigation and cleaning out its lagoon and resurfacing it
28 so that no waste seeps into the groundwater. The IHO shall pay for all remediation costs.

29 (h) Under no circumstance shall the local homeowners or other businesses be
30 penalized by the Department or any other federal, State, or county departments for having
31 wells that are not State-certified and for not upgrading their wells to a State-certified
32 condition when these wells are contaminated by an IHO. IHOs that contaminate nearby
33 wells shall pay to drill new State-certified wells for the people or businesses whose wells
34 are contaminated. If the water from these new wells does not meet State and United
35 States Environmental Protection Agency water quality standards, the IHOs shall provide
36 the people or businesses with a source of water that meets these standards.

37 **"§ 130C-1-20. Dead animal disposal.**

38 (a) All existing and new IHOs must have a plan to dispose of dead animals owned
39 by the IHOs. The plans must be designed by engineers licensed in North Carolina and
40 approved by the local county Soil and Water Conservation Service and the local county
41 health department. Where the animals, while alive, are owned by corporations that
42 contract animals out to farmers, the corporations will design and implement a dead
43 animal disposal plan such that growers will not be responsible for dead animal disposal.

- 1 (1) Existing animal operations or corporations must have their plans
2 approved within six months of this Article's enactment. Existing animal
3 operations or corporations must have their dead animal disposal plans in
4 operation within one year of this Article's enactment.
- 5 (2) New animal operations or corporations must have their plans approved
6 and ready for operation before animals are placed at the facilities.
- 7 (b) Dead animals can be disposed of by placing them in fabricated pits,
8 incineration, composting, or removal to a rendering pit.
- 9 (1) The fabricated pits must be made of concrete block, poured concrete, or
10 treated timbers and built to Soil Conservation Service standards.
- 11 (2) The incinerators must have dual-burning chambers or afterburners. The
12 animal operation must apply to DEM for an air permit before the
13 incinerator begins operation.
- 14 (3) All composters must have a roof, concrete foundation, and pressure-
15 treated wood or other rot-resistant building materials.
- 16 (c) Before disposal, all animal operations must keep dead animals inside a
17 building to prevent dogs or wild animals from having any contact with the dead animals.

18 **"§ 130C-1-21. Violations.**

- 19 (a) If there is substantial evidence that any person has violated or is violating any
20 provision of this Article, then:
- 21 (1) The Director may issue an order directing the person to desist in the
22 practice which constitutes the violation or to take any corrective action
23 as may be necessary to ensure that the violation will cease. The person
24 to whom the order is issued may cause to be commenced a contested
25 hearing pursuant to Chapter 150B of the General Statutes.
- 26 (2) If it is determined by the Director that an emergency exists respecting
27 any matter affecting or likely to affect the public health, the Director
28 may issue any order necessary to terminate the emergency without
29 notice and without hearing. Any order shall be binding and effective
30 immediately and until the order is modified or vacated at a hearing
31 pursuant to Article 3 of Chapter 150B of the General Statutes or by a
32 court pursuant to Article 4 of Chapter 150B of the General Statutes.
- 33 (3) The Department may request the Attorney General to institute legal
34 proceedings pursuant to the G.S. 130C-1-22.

35 **"§ 130C-1-22. Penalties.**

- 36 (a) Any person who violates any provision of this Article is subject to a civil
37 penalty of up to five thousand dollars (\$5,000) for each day of the violation.
- 38 (b) Any person who negligently dumps, deposits, or discharges a pollutant into
39 any water of the State in violation of this Article is guilty of a misdemeanor punishable as
40 follows:
- 41 (1) For a first conviction, the person shall be fined up to twenty-five
42 thousand dollars (\$25,000) for each day of the violation, imprisoned for
43 a term of up to one year, or both.

1 (2) For a second or subsequent conviction, the person shall be fined up to
2 fifty thousand dollars (\$50,000) for each day of the violation,
3 imprisoned for a term of up to two years, or both.

4 (c) Any person who knowingly dumps, deposits, or discharges a pollutant into any
5 water of the State in violation of this Article:

6 (1) For a first conviction, the person is guilty of a misdemeanor punishable
7 by a fine of up to fifty thousand dollars (\$50,000), a term of
8 imprisonment not to exceed two years, or both.

9 (2) For a second or subsequent conviction the person is guilty of a Class I
10 felony, punishable by a fine of up to one hundred thousand dollars
11 (\$100,000) for each day of the violation, imprisonment for a term not to
12 exceed five years, or both.

13 (d) Any person who knowingly makes any false statement, representation, or
14 certification in any application, record, report, plan, or other document filed or required
15 to be maintained under this Article, or who falsifies, tampers with, or knowingly renders
16 inaccurate any monitoring device or method required to be maintained under this Article
17 is guilty of a misdemeanor punishable by a fine of not more than ten thousand dollars
18 (\$10,000), imprisonment in the county jail for not more than six months, or both.

19 (e) The Attorney General shall, at the request of the Department, institute any
20 legal proceeding, including an action for injunctive relief, necessary to enforce the
21 penalty provisions of this Article or to obtain compliance with this Article. In any such
22 civil action, any previous findings of fact of the Director or the Commission after notice
23 and hearing shall be conclusive if supported by substantial evidence in the record when
24 the record is viewed as a whole.

25 (f) In all proceedings with respect to any alleged violation of this Article, the
26 burden of proof shall be upon the Commission or the Department except in an action for
27 contempt.

28 (g) If the Attorney General has instituted legal proceedings in accordance with this
29 section, all related issues which could otherwise be raised by the alleged violator in a
30 proceeding for judicial review shall be raised in the legal proceedings instituted in
31 accordance with this section.

32 **"§ 130C-1-23. Injunctive relief.**

33 (a) Whenever the Department has reasonable cause to believe that any person is
34 violating or threatening to violate this Article or any rule or order adopted or issued
35 pursuant to this Article, or any term condition, or provision of an approved IHO
36 construction, expansion, and/or operation plan or other approved plan required under this
37 Article, the Department may request the Attorney General to institute a civil action for
38 injunctive relief to restrain the violation or threatened violation.

39 (b) Upon determination by a court that an alleged violation is occurring or is
40 threatened, it shall enter such orders or judgments as are necessary to abate the violation
41 or to prevent the threatened violation. The institution of an action for injunctive relief
42 under this section shall not relieve any party to such proceedings from any civil or
43 criminal penalty prescribed for violations of this Article.

1 **"§ 130C-1-24. Citizen actions.**

2 (a) Except as provided in subdivision (2) of this subsection, a person with standing
3 as provided in subsection (c) of this section may commence a civil action in superior
4 court on the person's own behalf against any of the following:

5 (1) A person, including the State of North Carolina, for violating any
6 provision of this Article; or

7 (2) The Director or any official or employee of the Department where there
8 is an alleged failure to perform any act or duty under this Article or a
9 rule adopted pursuant to this Article which is not a discretionary act or
10 duty.

11 (b) An action shall not be commenced pursuant to subdivision (a)(1) of this
12 section, unless the person commencing the action has provided the Director and the
13 alleged violator with a written notice at least 60 days prior to commencing the action.
14 The written notice shall specify the nature of the violation and that legal action is
15 contemplated under this section if the violation is not abated and, if necessary, remedial
16 action is not taken. The State may intervene in such an action as a matter of right. An
17 action shall not be commenced pursuant to subdivision (a)(1) of this section, if the
18 Department or the State has commenced and is actively prosecuting a civil action or is
19 actively negotiating an out-of-court settlement to require abatement of the violation and,
20 if necessary, remediation of damages. However, any person may intervene as a matter of
21 right in such an action.

22 (c) A person shall have standing to commence an action pursuant to subdivision
23 (a)(1) of this section, or to intervene in an action pursuant to subdivision (a)(2) of this
24 section, if the person is adversely affected by the alleged violation or the alleged failure
25 to perform a duty or act.

26 (d) In an action commenced pursuant to subdivision (a)(1) of this section, the court
27 may award costs of litigation including reasonable attorneys' fees and expert witness fee,
28 to a prevailing party who had standing to sue or intervene.

29 (e) This section does not restrict any right under statutory or common law of a
30 person or class of persons to seek enforcement of provisions of this Article or a rule
31 adopted pursuant to this Article or seek other relief permitted under the law.

32 **"§ 130C-1-25. Court actions.**

33 All civil and criminal actions instituted pursuant to this Article shall be brought in the
34 Superior Court of Wake County, unless the action is initiated by a private citizen, in
35 which event the action may be initiated in either the Superior Court of Wake County or
36 the county in which the IHO is located.

37 **"§ 130C-1-26. Animal Waste Disposal Best Management Practices Fund.**

38 There is established an account within the Department of Environment, Health, and
39 Natural Resources to be known as the Animal Waste Disposal Best Management
40 Practices Fund. Funds collected pursuant to G.S. 130C-1-11 shall be credited to that
41 account.

42 Growers who need financial assistance in implementing the best management
43 practices which are required by this Article may apply to the Animal Waste Disposal Best

1 Management Practices Fund for funds to help pay for their best management practice
2 implementation costs. These funds shall be distributed on a sliding scale with preference
3 being given to growers who have the lowest incomes and least number of animal units at
4 their operations."

5 Sec. 2. An IHO that exists on July 1, 1995, that is required to have a permit
6 under this act, shall apply for a permit no later than one year from the effective date of
7 this act.

8 Sec. 3. If any paragraph, subparagraph, sentence, clause, phrase, or word of
9 this Article, or any part thereof, be declared unconstitutional or invalid for any reason, the
10 remainder of said Article shall not be affected thereby and shall remain in full force and
11 effect, and to that end, this Article is declared to be severable.

12 Sec. 4. There is appropriated from the General Fund to the Department of
13 Environment, Health, and Natural Resources the sum of one million five hundred
14 thousand dollars (\$1,500,000) for the 1995-96 fiscal year and the sum of one million five
15 hundred thousand dollars (\$1,500,000) for the 1996-97 fiscal year to establish the Animal
16 Waste Disposal Best Management Practices Fund.

17 Sec. 5. There is appropriated from the General Fund to the Department of
18 Environment, Health, and Natural Resources the sum of one million five hundred
19 thousand dollars (\$1,500,000) for the 1995-96 fiscal year and the sum of one million five
20 hundred thousand dollars (\$1,500,000) for the 1996-97 fiscal year to carry out the
21 purposes of this act.

22 Sec. 6. This act becomes effective July 1, 1995.