

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 85

Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors: Representatives Morgan; Culp, McComas, Redwine, Shubert, and Watson.

Referred to: Environment.

February 10, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
2 AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
3 THE ENVIRONMENT.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. This act shall be known and may be cited as the "Environmentally
7 Sound Policy Act of 1997 (ESP)".

8 Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

9 **"ARTICLE 67.**

10 **"SWINE FARMS.**

11 **"§ 106-800. Title.**

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

13 **"§ 106-801. Purpose.**

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

18 **"§ 106-802. Definitions.**

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

- 1 (1a) 'Intensive animal feeding operation' means a new or enlarged swine
2 farm with a design capacity of more than 800,000 lbs. steady state live
3 weight.
- 4 (1) 'Lagoon' means a confined body of water to hold animal byproducts
5 including bodily waste from animals or a mixture of waste with feed,
6 bedding, litter or other agricultural materials.
- 7 (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.
- 8 (3) 'Occupied residence' means a dwelling actually inhabited by a person
9 on a continuous basis as exemplified by a person living in his or her
10 home.
- 11 (4) 'Site evaluation' means an investigation to determine if a site meets all
12 federal and State standards as evidenced by the Waste Management
13 Facility Site Evaluation Report on file with the Soil and Water
14 Conservation District office or a comparable report certified by a
15 professional engineer or a comparable report certified by a technical
16 specialist approved by the North Carolina Soil and Water Conservation
17 Commission.

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

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

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

- 25 (a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~
26 located:
- 27 (1) ~~at~~ At least 1,500 feet from any occupied residence;
- 28 (2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or
29 forest, wildlife refuge, fragile or historic area, area or facility used for
30 outdoor recreation, or church;
- 31 (3) At least 1,320 feet (1/4 mile) from any surface waters of the State;
- 32 (4) At least 1,000 feet from any property boundary for any new or enlarged
33 swine farm with a design capacity of at least 500,000 lbs. steady state
34 live weight;
- 35 (5) At least 1,500 feet from any property boundary for any new or enlarged
36 swine farm with a design capacity of more than 1,000,000 lbs. steady
37 state live weight;
- 38 (6) ~~at~~ At least 500 feet from any property boundary. boundary or public or
39 private drinking water supply.

40 The outer perimeter of the land area onto which waste is applied from a lagoon that is
41 a component of a swine farm shall be at least ~~50-100~~ feet from any boundary of property
42 on which an occupied residence is located from any perennial stream or river, other than
43 an irrigation ditch or canal.

1 (a) A new or expanding swine house or a lagoon that is a component of a swine
2 farm shall not be located in a 100-year floodplain unless protected from flooding as
3 provided for in regulations of the Federal Emergency Management Agency and the
4 National Flood Insurance Program on Floodplain Management. Such construction or
5 expansion must be certified by the Department of Environment, Health, and Natural
6 Resources.

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

11 **"§ 106-804. Enforcement.**

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

16 (1) Injunctive relief.

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

18 (3) Damages caused by the violation.

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

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

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

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

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

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

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

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

1 **"§ 106-805. Written notice of swine farms.**

2 Any person who intends to construct a swine farm whose animal waste management
3 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General
4 Statutes shall, after completing a site evaluation and before the farm site is modified,
5 ~~attempt to notify all adjoining property owners and owners,~~ all property owners who own
6 property located across a public road, street, or highway from the swine farm ~~farm,~~ the
7 county or counties in which the farm site is located, and the local health departments of
8 that person's intent to construct the swine farm. This notice shall be by certified mail sent
9 to the address on record at the property tax office in the county in which the land is
10 located. The written notice shall include all of the following:

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

22 Prior to issuing a permit for an intensive animal feeding operation, the Department shall
23 conduct a public hearing at the applicant's expense if the Department receives at least 20
24 written requests for the public hearing.

25 **"§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.**

26 (a) No intensive animal feeding operation may cause, allow, or permit emission
27 into the ambient air of an outdoor recreational area any substance or combination of
28 substances in a quantity that is determined to be an undesirable level of odor unless
29 preventative measures are taken to abate or control the emission to the satisfaction of the
30 Department of Environment, Health, and Natural Resources. When the Department
31 receives an odor complaint, the Department shall determine through field surveillance or
32 specific complaints, if the odor is at an undesirable level, and shall require remediation of
33 the undesirable level of odor.

34 (b) Nothing in this section shall prohibit an individual or group of persons from
35 bringing a complaint against an intensive animal feeding operation as defined under G.S.
36 106-802."

37 Section 3. G.S. 130A-39(b) reads as rewritten:

38 "(b) A local board of health may adopt a more stringent rule in an area regulated by
39 the Commission for Health Services or the Environmental Management Commission
40 where, in the opinion of the local board of health, a more stringent rule is required to
41 protect the public health; otherwise, the rules of the Commission for Health Services or
42 the rules of the Environmental Management Commission shall prevail over local board of
43 health rules. However, a local board of health may not adopt a rule concerning the

1 grading, operating, and permitting of food and lodging facilities as listed in Part 6 of
2 Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health
3 may adopt rules concerning wastewater collection, treatment and disposal systems which
4 are not designed to discharge effluent to the land surface or surface waters only in
5 accordance with G.S. 130A-335(c). A local board of health may adopt a rule governing
6 intensive animal feeding operations, as defined by G.S. 106-802, that is more stringent
7 than rules adopted by the Commission for Health Services or the Environmental
8 Management Commission."

9 Section 4. G.S. 143-215(e) reads as rewritten:

10 "(e) Except as required by federal law or regulations, the Commission may not
11 adopt effluent standards or limitations applicable to animal and poultry feeding
12 operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other
13 conveyances have been constructed for the purpose of willfully discharging pollutants to
14 the waters of the State, the Secretary shall have the authority to assess fines and penalties
15 not to exceed ten thousand dollars (\$10,000) for the first offense. The definitions and
16 provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply
17 to this subsection. This subsection does not apply to an intensive animal feeding
18 operation, as defined by G.S. 106-802. Effluent standards and limitations applicable to
19 intensive animal feeding operations shall be adopted and enforced as otherwise provided
20 by this Article."

21 Section 5. G.S. 153A-340 reads as rewritten:

22 "**§ 153A-340. Grant of power.**

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

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

37 (c) The regulations may provide that a board of adjustment may determine and
38 vary their application in harmony with their general purpose and intent and in accordance
39 with general or specific rules therein contained. The regulations may also provide that
40 the board of adjustment or the board of commissioners may issue special use permits or
41 conditional use permits in the classes of cases or situations and in accordance with the
42 principles, conditions, safeguards, and procedures specified therein and may impose
43 reasonable and appropriate conditions and safeguards upon these permits. Where

1 appropriate, the conditions may include requirements that street and utility rights-of-way
2 be dedicated to the public and that recreational space be provided. When issuing or
3 denying special use permits or conditional use permits, the board of commissioners shall
4 follow the procedures for boards of adjustment except that no vote greater than a majority
5 vote shall be required for the board of commissioners to issue such permits, and every
6 such decision of the board of commissioners shall be subject to review by the superior
7 court by proceedings in the nature of certiorari.

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

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

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

20 Section 6. A rule regulating intensive animal feeding operations adopted by a
21 local board of health prior to the date Section 3 of this act becomes effective is hereby
22 retroactively validated. A zoning regulation applicable to intensive animal feeding
23 operations adopted by a board of county commissioners prior to the date Section 5 of this
24 act becomes effective is hereby retroactively validated.

25 Section 7. There is established a one-year moratorium for any new or
26 expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter
27 143 of the General Statutes for any area in the State that: (i) has a county population of
28 less than 75,000 according to the most recent decennial federal census; (ii) has over one
29 hundred fifty million dollars (\$150,000,000) on expenditures for travel and tourism based
30 on the most recent figures of the Department of Commerce; and (iii) is not in the coastal
31 area as defined by G.S. 113A-103. Effective January 1, 1997, until December 31, 1997,
32 no permit for a new or expanding swine farm or lagoon shall be issued by the
33 Environmental Management Commission.

34 Section 8. This act is effective when it becomes law. In addition, the
35 provisions of this act applicable to intensive animal feeding operations as defined in G.S.
36 106-802 apply January 1, 1997, notwithstanding Section 24 of Chapter 626 of the 1995
37 (1996 Regular Session) Session Laws.