

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40389-MHa-23A

Short Title: Poultry Waste Management. (Public)

Sponsors: Representative Harrison.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE A PERMITTING PROGRAM FOR DRY LITTER POULTRY OPERATIONS; TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY AND DETERMINE THE NUMBER AND LOCATION OF POULTRY FARMS (CAFOS) IN NORTH CAROLINA, THE DRY LITTER WASTE MANAGEMENT SYSTEMS AND PRACTICES THAT ARE EMPLOYED BY THESE FARMS, THE POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS AND DAMAGES THESE SYSTEMS AND PRACTICES MAY HAVE, AND RECOMMENDATIONS ON HOW BEST TO REGULATE THESE WASTE MANAGEMENT SYSTEMS IN PROTECTING THE ENVIRONMENT AND THE PUBLIC'S HEALTH AND SAFETY; AND TO REVISE WASTE MANAGEMENT PLAN SUBMISSION REQUIREMENTS FOR DRY LITTER POULTRY FACILITIES.

Whereas, as poultry production in the United States has increased, the total number of farms has declined; and

Whereas, ninety-seven percent (97%) of the 9 billion chickens produced for consumption each year are raised in Concentrated Animal Feeding Operations (CAFOs); and

Whereas, it is estimated that in 2022, the State had over 544 million poultry and 4,863 dry litter poultry facilities, compared to 8.8 million hogs and 2,489 hog farms; and

Whereas, among all animal operations in the State, those with poultry are the largest source of nutrients from waste. The waste produced, known as dry litter, is a mixture of manure, bedding, and feathers that contains heavy metals and pathogens in addition to nutrients; and

Whereas, for disposal, the waste is applied onto adjacent fields or trucked a short distance to be used as fertilizer. When mobilized in runoff or subsurface flow, the waste is a threat to water quality; and

Whereas, because dry litter poultry operations do not discharge their waste directly to surface waters, they are not regulated under the National Pollution Discharge Elimination System (NPDES), and these operations are deemed permitted unless an illicit discharge is reported and documented by staff; and

Whereas, the nation's leading poultry states, including Georgia and Arkansas, have adopted proactive policy and comprehensive nutrient management plans that protect the natural environment and public health without creating an unnecessary burden on agricultural interests; and

Whereas, in addition to nutrient pollution from runoff of land application sites, the lack of regulatory oversight for dry poultry litter also threatens surrounding communities through pathogen-laden surface waters and contaminated flood waters; and



1 Whereas, this pollution disproportionately impacts communities of color and
2 jeopardizes economic drivers in all communities; and

3 Whereas, G.S. 143-215.10C requires that any owner or operator of a dry litter poultry
4 facility that is not subject to federal regulation but that involves 30,000 or more birds shall
5 develop an animal waste management plan; and

6 Whereas, the North Carolina Department of Environmental Quality basin planning
7 group has requested access to any information regarding nutrient loading rates from dry litter
8 poultry operations; and

9 Whereas, there have been substantial technological advances to the disposition of
10 poultry waste, including various recycling technologies such as anaerobic digestion, with
11 beneficial economic outcomes to both the industry and the public, and there has been significant
12 passage of time since this agricultural industry has been studied. Such review and discovery can
13 be beneficial to all; Now, therefore,

14 The General Assembly of North Carolina enacts:

15
16 **PART I. PERMITTING OF INDUSTRIAL POULTRY OPERATIONS AND LIMIT**
17 **THOSE OPERATIONS IN 100-YEAR FLOODPLAIN**

18 **SECTION 1.(a)** G.S. 143-215.10B(1) reads as rewritten:

19 "(1) "Animal operation" means any agricultural feedlot activity involving 250 or
20 more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more
21 sheep, or 30,000 or more confined ~~poultry with a liquid animal waste~~
22 ~~management system, poultry,~~ or any agricultural feedlot activity with a liquid
23 animal waste management system that discharges to the surface waters of the
24 State. A public livestock market regulated under Article 35 of Chapter 106 of
25 the General Statutes is an animal operation for purposes of this Part."

26 **SECTION 1.(b)** G.S. 143-215.10C reads as rewritten:

27 **"§ 143-215.10C. Applications and permits.**

28 (a) No person shall construct or operate an animal waste management system for an
29 animal operation ~~or operate an animal waste management system for a dry litter poultry facility~~
30 ~~that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73~~
31 ~~Federal Register 70418 (November 20, 2008),~~ without first obtaining an individual permit or a
32 general permit under this Article. The Commission shall develop a system of individual and
33 general permits for animal ~~operations and operations, including~~ dry litter poultry ~~facilities~~
34 facilities, based on species, number of animals, and other relevant factors. The Commission shall
35 develop a general permit for animal operations that includes authorization for the permittee to
36 construct and operate a farm digester system. It is the intent of the General Assembly that most
37 animal waste management systems be permitted under a general permit. The Commission, in its
38 discretion, may require that an animal waste management system, including an animal waste
39 management system that utilizes a farm digester system, be permitted under an individual permit
40 if the Commission determines that an individual permit is necessary to protect water quality,
41 public health, or the environment. After the general permit for animal operations that includes
42 authorization for the permittee to construct and operate a farm digester system has been issued,
43 the decision to require an individual permit shall not be based solely on the fact that the animal
44 waste management system utilizes a farm digester system. The owner or operator of an animal
45 operation shall submit an application for a permit at least 180 days prior to construction of a new
46 animal waste management system or expansion of an existing animal waste management system
47 and shall obtain the permit prior to commencement of the construction or expansion. ~~The owner~~
48 ~~or operator of a dry litter poultry facility that is required to be permitted under 40 Code of Federal~~
49 ~~Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall submit~~
50 ~~an application for a permit at least 180 days prior to operation of a new animal waste management~~
51 ~~system.~~

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

7 (b) An animal waste management system that is not required to be permitted under 40
8 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20,
9 2008), shall be designed, constructed, and operated so that the animal operation served by the
10 animal waste management system does not cause pollution in the waters of the State except as
11 may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm.

12 (b1) An existing animal waste management system that is required to be permitted under
13 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20,
14 2008), shall be designed, constructed, maintained, and operated in accordance with 40 Code of
15 Federal Regulations § 412, as amended at 73 Federal Register 70418 (November 20, 2008), so
16 that the animal operation served by the animal waste management system does not cause
17 pollution in waters of the State except as may result because of rainfall from a storm event more
18 severe than the 25-year, 24-hour storm. A new animal operation ~~or dry litter poultry facility that~~
19 ~~is required to be permitted under 40 Code of Federal Regulations § 412.46, as amended at 73~~
20 ~~Federal Register 70418 (November 20, 2008),~~ shall be designed, constructed, maintained, and
21 operated so that there is no discharge of pollutants to waters of the State.

22 (c) The Commission shall act on a permit application as quickly as possible and may
23 conduct any inquiry or investigation it considers necessary before acting on an application.

24 (c1) Failure of the Commission to make a final permitting decision involving a notice of
25 intent for a certificate of coverage under a general permit for animal operations that includes
26 authorization for the permittee to construct and operate a farm digester system within 90 days of
27 the Commission's receipt of a completed notice of intent shall result in the deemed approval of
28 coverage under the permit. If the Commission fails to act within 90 days of the Commission's
29 receipt of a completed notice of intent, the permittee may request that the Commission provide
30 written confirmation that the notice of intent is deemed approved. Failure to provide this written
31 confirmation within 10 days of the request shall serve as a basis to seek a contested case hearing
32 pursuant to Article 3 of Chapter 150B of the General Statutes. Unless all parties to the case agree
33 otherwise in writing, the administrative law judge shall issue a final decision or order in the
34 contested case no later than 120 days after its commencement pursuant to G.S. 150B-23;
35 provided that, upon written request of the administrative law judge or any party to the hearing,
36 the Chief Administrative Law Judge may extend this deadline for good cause shown, no more
37 than two times, for not more than 30 days per extension. Upon review of a failure to act on a
38 notice of intent, the administrative law judge may either (i) direct the Commission to issue a
39 written certificate of coverage under the general permit or (ii) deny the petition.

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

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

- 48 (1) A checklist of potential odor sources and a choice of site-specific,
49 cost-effective remedial best management practices to minimize those sources.
- 50 (2) A checklist of potential insect sources and a choice of site-specific,
51 cost-effective best management practices to minimize insect problems.

- 1 (3) Provisions that set forth acceptable methods of disposing of mortalities.
- 2 (4) Provisions regarding best management practices for riparian buffers or
3 equivalent controls, particularly along perennial streams.
- 4 (5) Provisions regarding the use of emergency spillways and site-specific
5 emergency management plans that set forth operating procedures to follow
6 during emergencies in order to minimize the risk of environmental damage.
- 7 (6) Provisions regarding periodic testing of waste products used as nutrient
8 sources as close to the time of application as practical and at least within 60
9 days of the date of application and periodic testing, at least once every three
10 years, of soils at crop sites where the waste products are applied. Nitrogen
11 shall be a rate-determining element. Phosphorus shall be evaluated according
12 to the nutrient management standard approved by the Soil and Water
13 Conservation Commission of the Department of Agriculture and Consumer
14 Services and the Natural Resources Conservation Service of the United States
15 Department of Agriculture for facilities that are required to be permitted under
16 40 Code of Federal Regulations § 122, as amended at 73 Federal Register
17 70418 (November 20, 2008). If the evaluation demonstrates the need to limit
18 the application of phosphorus in order to comply with the nutrient
19 management standard, then phosphorus shall be a rate-determining element.
20 Zinc and copper levels in the soils shall be monitored, and alternative crop
21 sites shall be used when these metals approach excess levels.
- 22 (7) Provisions regarding waste utilization plans that assure a balance between
23 nitrogen application rates and nitrogen crop requirements, that assure that lime
24 is applied to maintain pH in the optimum range for crop production, and that
25 include corrective action, including revisions to the waste utilization plan
26 based on data of crop yields and crops analysis, that will be taken if this
27 balance is not achieved as determined by testing conducted pursuant to
28 subdivision (6) of this subsection.
- 29 (8) Provisions regarding the completion and maintenance of records on forms
30 developed by the Department, which records shall include information
31 addressed in subdivisions (6) and (7) of this subsection, including the dates
32 and rates that waste products are applied to soils at crop sites, and shall be
33 made available upon request by the Department.
- 34 ~~(f) Any owner or operator of a dry litter poultry facility that is not required to be
35 permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418
36 (November 20, 2008), but that involves 30,000 or more birds shall develop an animal waste
37 management plan that complies with the testing and record-keeping requirements under
38 subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal
39 waste management system shall retain records required under this section and by the Department
40 on-site for three years.~~
- 41 ~~(f1) An animal waste management plan for a dry litter poultry facility required to be
42 permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418
43 (November 20, 2008), shall include the components set out in subdivisions (3), (6), (7), and (8)
44 of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations §
45 122, as amended at 73 Federal Register 70418 (November 20, 2008), for land application
46 discharges, subdivision (4) of subsection (e) of this section.~~
- 47 (f2) Periodic testing of waste products as required in subdivision (6) of subsection (e) of
48 this section, ~~subsection (f) of this section and subsection (f1) of this section~~ may be temporarily
49 suspended in compliance with G.S. 106-399.4 when the State Veterinarian, in consultation with
50 the Commissioner of Agriculture and with the approval of the Governor, determines that there is
51 an imminent threat within the State of a contagious animal disease. The suspension of testing

1 only applies to the animal operation types designated by the State Veterinarian, and shall be in
2 effect for a period of time that the State Veterinarian deems necessary to prevent and control the
3 animal disease. During the suspension of waste analysis, waste product nutrient content to be
4 used for application of waste at no greater than agronomic rates shall be established by the 1217
5 Interagency Committee as created by Session Law 1995-626.

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7 **SECTION 1.(c)** Part 1A of Article 21 of Chapter 143 of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 143-215.10J. Industrial scale animal waste management systems forbidden in 100-year
10 floodplain.**

11 No component of an animal waste management system for an animal operation shall be
12 constructed on land that is located within the 100-year floodplain. As used in this section,
13 "100-year floodplain" means any area subject to inundation by the one percent (1%) annual
14 chance flood event, as indicated on the most recent Flood Insurance Rate Map prepared by the
15 Federal Emergency Management Agency under the National Flood Insurance Program."

16 **SECTION 1.(d)** G.S. 106-850 reads as rewritten:

17 **"§ 106-850. Agriculture cost share program.**

18 (a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution
19 Control. The program shall be created, implemented, and supervised by the Soil and Water
20 Conservation Commission.

21 (b) The program shall be subject to the following requirements and limitations:

22 ...

- 23 (5) Funding may be provided to assist practices including conservation tillage,
24 diversions, filter strips, field borders, critical area plantings, sedimentation
25 control structures, sod-based rotations, grassed waterways, strip-cropping,
26 terraces, cropland conversion to permanent vegetation, grade control
27 structures, water control structures, closure of lagoons, closure of animal
28 waste management systems as defined in G.S. 143-215.10B located in
29 100-year floodplains, emergency spillways, riparian buffers or equivalent
30 controls, odor control best management practices, insect control best
31 management practices, and animal waste management systems and
32 application. Funding for animal waste management shall be allocated for
33 practices in river basins such that the funds will have the greatest impact in
34 improving water quality.

35"

36 **SECTION 1.(e)** This section becomes effective January 1, 2024.

37
38 **PART II. STUDY**

39 **SECTION 2.(a)** The definitions set out in G.S. 143-215.10B shall apply to this act.

40 **SECTION 2.(b)** The Environmental Review Commission shall conduct a
41 fact-driven, science-based study of the environmental and public health impacts of dry litter
42 poultry waste in North Carolina and the potential regulatory and technological solutions for
43 addressing these impacts. The Commission shall specifically study all of the following:

- 44 (1) The growth of the poultry industry in the State, including the current location,
45 size, and number of dry litter poultry facilities in the State.
46 (2) The location, size, and number of dry litter poultry facilities located in the
47 500-year floodplain. The Commission shall consider options for removing
48 such facilities from the floodplain or requiring management practices to make
49 such facilities more resilient during flooding events.
50 (3) The amount of dry litter poultry waste produced by dry litter poultry facilities,
51 the methods of disposing of the waste, the documentation of how waste is

1 disposed of, and how much of the waste is disposed of on-site by the waste
2 generator and how much is disposed of off-site by a third-party hauler or waste
3 transport and disposal company.

- 4 (4) The environmental impacts of dry litter poultry waste, including surface water
5 impacts, groundwater impacts, soil contamination, and atmospheric
6 deposition caused by nutrients such as nitrogen and phosphorus and heavy
7 metals such as arsenic, copper, and zinc.
- 8 (5) The public health impacts of dry litter poultry waste, including impacts related
9 to odor, drinking water contamination, drug residues, pathogens, and disease
10 vectors and pests.
- 11 (6) The health impacts of dry litter poultry waste on workers at dry litter poultry
12 facilities and people living in close proximity to dry litter poultry facilities.
- 13 (7) The cumulative environmental and public health impacts of waste produced
14 by dry litter poultry facilities and animal operations for swine.
- 15 (8) The current regulation of dry litter poultry facilities and the potential
16 regulation of dry litter poultry facilities to better protect the environment and
17 public health. The Commission shall identify the deficiencies in the regulation
18 of dry litter poultry facilities in the State and consider whether the regulations
19 of dry litter poultry facilities in other states and the regulation of animal
20 operations for swine in the State should be applied to dry litter poultry
21 facilities.
- 22 (9) The disposal of dead poultry in cases of severe storms or flooding events.
- 23 (10) The current and potential animal waste management technologies that could
24 reduce or eliminate the environmental and public health impacts of dry litter
25 poultry waste.
- 26 (11) The need for additional resources, including appropriations, professional
27 expertise, and scientific studies, necessary to comprehensively examine the
28 issues set out in this act.

29 **SECTION 2.(c)** Upon its request, the Commission shall be assisted by all State
30 agencies, including the Department of Agriculture and Consumer Services, the Department of
31 Environmental Quality, the Department of Health and Human Services, the Department of Labor,
32 the North Carolina Poultry Federation, and The University of North Carolina and its constituent
33 institutions. The Commission may request recommendations from any of these entities related to
34 any of the topics set out in this act.

35 **SECTION 2.(d)** The Commission shall report its findings, including any
36 recommendations, to the 2024 Regular Session of the 2023 General Assembly upon its
37 convening.

38 **PART III. REPORTING REQUIREMENT**

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

40 "(f) Any owner or operator of a dry litter poultry facility that is not required to be
41 permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418
42 (November 20, 2008), but that involves 30,000 or more birds shall develop and annually submit
43 to the Department in a digital format an animal waste management plan that complies with the
44 testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of
45 this section. Any operator of this type of animal waste management system shall retain records
46 required under this section and by the Department on-site for three years."

47 **SECTION 3.(b)** The sum of twenty-five thousand dollars (\$25,000) in nonrecurring
48 funds for the 2023-2024 fiscal year is appropriated from the General Fund to the Department of
49 Environmental Quality to be allocated to the Division of Water Resources to develop educational
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1 resources and provide technical assistance for owners and operators of dry litter poultry facilities
2 in complying with the reporting requirement set out in this act.

3 **SECTION 3.(c)** Subsection (a) of this section is effective January 1, 2024.
4 Subsection (b) of this section becomes effective July 1, 2023.

5 6 **PART IV. INCREASE TRANSPARENCY**

7 **SECTION 4.** G.S. 106-24.1 reads as rewritten:

8 "**§ 106-24.1. Confidentiality of information collected and published.**

9 All information published by the Department of Agriculture and Consumer Services pursuant
10 to this Part shall be classified so as to prevent the identification of information received from
11 individual farm operators. All information generated by any federal agency received pursuant to
12 this Chapter that is confidential under federal law shall be held confidential by the Department
13 and its employees, unless confidentiality is waived by the federal agency. Complaints of
14 violations of this Chapter or of Part 1A of Article 21 of Chapter 143 of the General Statutes
15 relating to a farm operation and all other records accumulated in conjunction with the
16 investigation of these complaints shall be considered confidential records and may be released
17 only by order of a court of competent jurisdiction. All information collected by the Department
18 from farm owners or animal owners, including, but not limited to, certificates of veterinary
19 inspection, animal medical records, laboratory reports received or generated from samples
20 submitted for analysis, or other records that may be used to identify a person or private business
21 entity subject to regulation by the Department analysis shall not be disclosed without the
22 permission of the owner ~~unless the~~ except in the following situations:

- 23 (1) The State Veterinarian determines that disclosure is necessary to prevent the
24 spread of an animal disease or to protect the public health, or the disclosure is
25 necessary in the implementation of these animal health programs.
26 (2) The disclosure is necessary to meet statutory requirements imposed on other
27 State agencies.
28 (3) The information is limited to the location, size, and ownership of an individual
29 farm operation."
30

31 **PART V. SEVERABILITY AND EFFECTIVE DATE**

32 **SECTION 5.** If any section or provision of this act is declared unconstitutional or
33 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
34 the part so declared to be unconstitutional or invalid.

35 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
36 law.