



2021-2022 General Assembly

# SENATE BILL 605: North Carolina Farm Act of 2021, Sec. 11: Create a New General Permit for Farms with Farm Digester Systems

**Committee:**  
**Introduced by:**  
**Analysis of:** Sec. 11 of S.L. 2021-78

**Date:** February 7, 2022  
**Prepared by:** Chris Saunders  
Staff Attorney

**OVERVIEW:** *Section 11 of S.L. 2021-78 directs the Environmental Management Commission (Commission) to develop a new general permit for animal operations that includes authorization for the permittee to construct and operate a farm digester system. After the issuance of the new general permit, the decision to require an individual permit must not be based solely on the fact that the animal waste management system utilizes a farm digester system.*

*The permit must become effective no later than July 2, 2022, and must expire on the later of September 30, 2024, or the effective date of the next version of the currently existing general permit for animal operations. Until the new general permit is issued, any animal operation that holds a general or individual permit that (i) is in effect on the effective date of this section and (ii) authorizes the construction and operation of a farm digester system, may construct and continue to operate the farm digester system as authorized by that permit. Animal operations that do not hold a permit authorizing the construction and operation of a farm digester system are allowed to submit a notice of intent to be covered under the new general permit. When the Commission does not make a final permitting decision within 90 days of the Commission's receipt of a completed notice of intent, the certificate of coverage is deemed approved.*

*This section also allows for construction or renovation of a farm digester system that is a component of a preexisting swine farm if the system does not expand the capacity of the farm.*

*This section also exempts farm digester systems from property tax.*

*This section became effective July 2, 2021.*

**BILL ANALYSIS:** Section 11 of S.L. 2021-78 directs the Environmental Management Commission Commission to develop a new general permit for animal operations that includes authorization for the permittee to construct and operate a farm digester system.

**Section 11.(a)** defines the terms "animal waste," "animal waste management system," "farm digester system," "lagoon cover," and "renewable animal biomass energy resource."

**Section 11.(b)** provides the general instruction to the Commission to develop the general permit. This section also provides that after the issuance of the new general permit, the decision to require an individual permit must not be based solely on the fact that the animal waste management system utilizes a farm digester system. This section also sets forth a process when the Commission does not make a final permitting decision involving a notice of intent to be covered under the new general permit as follows:

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- If the Commission does not make a final permitting decision within 90 days of the Commission's receipt of a completed notice of intent, the certificate of coverage is deemed approved.
- The Commission's failure to make a final permitting decision within 90 days is also a basis for a contested case. The administrative law judge may either direct the Commission to issue a written certificate of coverage under the general permit or deny the petition. The administrative law judge must issue a final decision within 120 days after its commencement, though there are provisions for extension of the deadline.

**Section 11.(c)** provides additional definitions for the terms "certificate of coverage," "Commission," and "notice of intent" for purposes of this section.

**Section 11.(d)** directs the Commission to immediately begin the process of developing and issuing a general permit for animal operations that includes authorization for the permittee to construct, monitor, and properly operate a farm digester system. The general permit is required to contain the same conditions that are included in the currently existing general permits for animal operations. The permit must become effective no later than July 2, 2022, and must expire on the later of September 30, 2024, or the effective date of the next version of the currently existing general permit for animal operations.

**Section 11.(e)** provides that until the new general permit is issued, any animal operation that holds a general or individual permit that (i) is in effect on the effective date of this section and (ii) authorizes the construction and operation of a farm digester system, may construct and continue to operate the farm digester system as authorized by that permit. Animal operations that do not hold a permit authorizing the construction and operation of a farm digester system may submit a notice of intent to be covered under the new general permit. If the submitted notice of intent is incomplete, the Commission must notify the applicant of the deficiency. Within 90 days of receipt of a completed notice of intent, the Commission is required to either issue a certificate of coverage allowing the operator to construct and operate the farm digester system or notify the operator of the basis for the denial of the certificate of coverage. If the Commission does not take action on the notice of intent within 90 days, authorization to construct and operate a farm digester system under the existing general permit is deemed approved.

**Section 11.(f)** provides that this section does not apply to permits for facilities that are required to have an NPDES permit under federal law.

**Section 11.(g)** clarifies that a farm digester system that is a component of a preexisting swine farm may be constructed or renovated if the construction or renovation of the farm digester system meets all the following requirements:

- The construction or renovation of the farm digester system does not result in an increase in the permitted capacity of the swine farm, as measured by the annual steady state live weight capacity of the swine farm.
- The construction or renovation of the farm digester system does not result in requiring an increase in the total permitted capacity of the animal waste management system or systems located at the swine farm.
- The construction or renovation of the farm digester system must comply with the siting requirements for swine houses and lagoons set out in G.S. 106-803 to the maximum extent practicable. For any portion of a farm digester system that fails to meet any siting requirement for a lagoon under G.S. 106-803, the construction or renovation of the farm digester system must not result in any portion of the constructed or renovated farm digester system being located any closer to the building, property, or well that is the object of the siting requirement than the farm digester system fails to meet, unless the owner of the affected property gives written permission.

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- Renovation or construction of a farm digester system is not allowed in the 100-year floodplain.

These requirements are the same as those enacted in 2011 for construction or renovation of a swine house that is a component of a preexisting swine farm.

**Section 11.(h)** exempts farm digester systems from property tax. Under prior law, animal waste management systems were not exempt from property tax unless the Commission determines that they comply with all the requirements for siting of a new swine farm.

**EFFECTIVE DATE:** This section became effective July 2, 2021.