

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 694
HOUSE BILL 1972

AN ACT TO CLARIFY THAT ALL DATA EXCEPT EFFLUENT OR EMISSION DATA IS ENTITLED TO PROTECTION AS A TRADE SECRET PURSUANT TO G.S. 132-1.2, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.3(a)(2) reads as rewritten:

"(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial ~~waste~~ waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, ~~emissions~~ emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal ~~system~~ system, or treatment ~~works~~ works: ~~Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in~~ In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission ~~limitations~~, limitations or toxic, ~~pretreatment~~ pretreatment, or new source performance ~~standards~~, standards. and (ii) shall be available to the public except that upon a showing satisfactory to the Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data or information necessary to determine compliance with standards adopted pursuant to Article 21B of this Chapter) to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary

~~to carry out a proper function of the Department or other agency, or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties."~~

Sec. 2. Part 1 of Article 21 of Chapter 143 of the General Statutes reads as rewritten:

"§ 143-215.3C. Confidential information protected.

(a) Information obtained under this Article or Article 21A or 21B of this Chapter shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission has access, if made public, would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider the information confidential.

(b) Effluent data, as defined in 40 Code of Federal Regulations § 2.302 (1 July 1993 Edition) and emission data, as defined in 40 Code of Federal Regulations § 2.301 (1 July 1993 Edition) is not entitled to confidential treatment under this section.

(c) Confidential information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter.

(d) The Commission shall provide for adequate notice to any person who submits information of any decision that the information is not entitled to confidential treatment and of any decision to release information that the person who submits the information contends is entitled to confidential treatment. Any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling from the Commission under G.S. 150B-4 within 10 days after the Commission notifies the person of its decision. The information may not be released by the Commission until the Commission issues a declaratory ruling or, if judicial review of the final agency decision is sought by any party, the information may not be released by the Commission until a final judicial determination has been made."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives