

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1124  
Committee Substitute Favorable 5/9/89

Short Title: Air Quality Permits/Special Orders.

(Public)

Sponsors:

Referred to:

April 10, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR PUBLIC NOTICE AND PUBLIC MEETINGS  
3 CONCERNING PROPOSED SPECIAL ORDERS BY CONSENT, AND  
4 PROPOSED ORDERS IF THE ENVIRONMENTAL MANAGEMENT  
5 COMMISSION DETERMINES THAT THERE IS A SIGNIFICANT INTEREST  
6 IN HOLDING SUCH A MEETING.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 143-215.110 reads as rewritten:  
9 **"§ 143-215.110. Special orders.**  
10 (a) Issuance. – The Commission is hereby empowered, after the effective date of  
11 standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from  
12 time to time to modify or revoke) a special order or other appropriate instrument, to any  
13 person whom it finds responsible for causing or contributing to any pollution of the air  
14 within the area for which standards have been established. Such an order or instrument  
15 may direct such person to take or refrain from taking such action, or to achieve such  
16 results, within a period of time specified by such special order, as the Commission  
17 deems necessary and feasible in order to alleviate or eliminate such pollution. The  
18 Commission is authorized to enter into consent special orders, assurances of voluntary  
19 compliance or other similar documents by agreement with the person responsible for  
20 pollution of the air, subject to the provisions of subsection (a1) of this section regarding  
21 proposed orders, and such document-document, when finalized by the Commission after  
22 public review, shall have the same force and effect as a special order of the Commission  
23 issued pursuant to hearing.

1       (a1) Public Notice and Review.— The Commission shall give notice of a proposed  
2 consent order to the proper State, interstate, and federal agencies, to interested persons,  
3 and to the public. The Commission shall also provide any other data it considers  
4 appropriate to those notified. The Commission shall prescribe the form and content of  
5 the notice. This notice shall be given at least 45 days prior to any final action regarding  
6 the consent order. Public notice shall be given by publication of the notice one time in a  
7 newspaper having general circulation within the county.

8       If any person desires a public meeting on any proposed consent order he shall  
9 request one in writing to the Commission within 30 days following date of the notice of  
10 the proposed consent order. The Commission shall consider all such requests for  
11 meeting, and if the Commission determines that there is a significant public interest in  
12 holding such meeting at least 30 days' notice of such meeting shall be given to all  
13 persons to whom notice of the proposed consent order was sent and to any other person  
14 requesting notice. At least 30 days prior to the date of meeting, the Commission shall  
15 also have a copy of the notice of the meeting published at least one time in a newspaper  
16 having general circulation in such county. The Commission shall prescribe the form  
17 and content of the notices.

18       The Commission shall prescribe the procedures to be followed in such meetings. If  
19 the meeting is not conducted by the Commission, detailed minutes of the meeting shall  
20 be kept and shall be submitted, along with any other written comments, exhibits or  
21 documents presented at the meeting, to the Commission for its consideration prior to  
22 final action granting or denying the order.

23       Not later than 60 days following notice of the proposed consent order or, if a public  
24 meeting is held, within 90 days following consideration of the matters and things  
25 presented at such meeting, the Commission shall finalize the proposed consent order.

26       (b) Procedure to Contest Certain Orders. – A special order that is issued without  
27 the consent of the person affected may be contested by that person by filing a petition  
28 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
29 person affected does not file a petition within the required time, the order is final and is  
30 not subject to review.

31       (d) Effect of Compliance. – Any person who installs an air- cleaning device for  
32 purpose of alleviating or eliminating air pollution in compliance with the terms of, or as  
33 result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a  
34 special order, consent special order, assurance of voluntary compliance or similar  
35 document issued pursuant to this section, or a final decision of the Commission or a  
36 court, rendered pursuant to either of said sections, shall not be required to take or refrain  
37 from any further action nor be required to achieve any further results under the terms of  
38 this or any other State law relating to the control of air pollution, for a period to be fixed  
39 by the Commission or court as it shall deem fair and reasonable in the light of all the  
40 circumstances after the date such special order, consent special order, assurance of  
41 voluntary compliance, other document or decision, or the conditions of such permit  
42 become finally effective, if:

- 43           (1) The air-cleaning devices result in the elimination or alleviation of air  
44           pollution to the extent required by such permit, special order, consent

1 special order, assurance of voluntary compliance, or other document or  
2 decision and complies with any other terms thereof; and  
3 (2) Such person complies with the terms and conditions of such permit,  
4 special order, consent special order, assurance of voluntary  
5 compliance, other document or decision within the time limit, if any,  
6 specified therein or as the same may be extended, and thereafter  
7 remains in compliance."

8 Sec. 2. G.S. 143-215.2 reads as rewritten:

9 **"§ 143-215.2. Special orders.**

10 (a) Issuance. – The Commission is hereby empowered, after the effective date of  
11 classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S.  
12 143-215, to issue (and from time to time to modify or revoke) a special order, or other  
13 appropriate instrument, to any person whom it finds responsible for causing or  
14 contributing to any pollution of the waters of the State within the area for which  
15 standards have been established. Such an order or instrument may direct such person to  
16 take, or refrain from taking such action, or to achieve such results, within a period of  
17 time specified by such special order, as the Commission deems necessary and feasible  
18 in order to alleviate or eliminate such pollution. The Commission is authorized to enter  
19 into consent special orders, assurances of voluntary compliance or other similar  
20 documents by agreement with the person responsible for pollution of the ~~water~~water,  
21 subject to the provisions of subsection (a1) of this section regarding proposed orders,  
22 and such ~~document~~ document, when finalized by the Commission after public review,  
23 shall have the same force and effect as a special order of the Commission issued  
24 pursuant to hearing. Provided, however, that the provisions of this section shall not  
25 apply to any agricultural operation, such as the use or preparation of any land for the  
26 purposes of planting, growing, or harvesting plants, crops, trees or other agricultural  
27 products, or raising livestock or poultry.

28 (a1) Public Notice and Review.– The Commission shall give notice of the  
29 proposed consent order to the proper State, interstate, and federal agencies, to interested  
30 persons, and to the public. The Commission shall also provide any other data it  
31 considers appropriate to those notified. The Commission shall prescribe the form and  
32 content of the notice. The notice shall be given at least 45 days prior to any final action  
33 regarding the consent order. Public notice shall be given by publication of the notice  
34 one time in a newspaper having general circulation within the county.

35 If any person desires a public meeting on any proposed consent order he shall  
36 request one in writing to the Commission within 30 days following date of the notice of  
37 the proposed consent order. The Commission shall consider all such requests for  
38 meeting, and if the Commission determines that there is a significant public interest in  
39 holding such meeting at least 30 days' notice of such meeting shall be given to all  
40 persons to whom notice of the proposed consent order was sent and to any other person  
41 requesting notice. At least 30 days prior to the date of meeting, the Commission shall  
42 also have a copy of the notice of the meeting published at least one time in a newspaper  
43 having general circulation in such county. The Commission shall prescribe the form  
44 and content of the notices.

1        The Commission shall prescribe the procedures to be followed in such meetings. If  
2 the meeting is not conducted by the Commission, detailed minutes of the meeting shall  
3 be kept and shall be submitted, along with any other written comments, exhibits or  
4 documents presented at the meeting, to the Commission for its consideration prior to  
5 final action granting or denying the order.

6        Not later than 60 days following notice of the proposed consent order or, if a public  
7 meeting is held, within 90 days following consideration of the matters and things  
8 presented at such meeting, the Commission shall finalize the consent order.

9        (b) Procedure to Contest Certain Orders. – A special order that is issued without  
10 the consent of the person affected may be contested by that person by filing a petition  
11 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
12 person affected does not file a petition within the required time, the order is final and is  
13 not subject to review.

14        (d) Effect of Compliance. – Any person who installs a treatment works for the  
15 purpose of alleviating or eliminating water pollution in compliance with the terms of, or  
16 as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or  
17 a special order, consent special order, assurance of voluntary compliance or similar  
18 document issued pursuant to this section, or a final decision of the Commission or a  
19 court rendered pursuant to either of said sections, shall not be required to take or refrain  
20 from any further action nor be required to achieve any further results under the terms of  
21 this or any other State law relating to the control of water pollution, for a period to be  
22 fixed by the Commission or court as it shall deem fair and reasonable in the light of all  
23 the circumstances after the date when such special order, consent special order,  
24 assurance of voluntary compliance, other document, or decision, or the conditions of  
25 such permit become finally effective, if:

26            (1) The treatment works result in the elimination or alleviation of water  
27            pollution to the extent required by such permit, special order, consent  
28            special order, assurance of voluntary compliance or other document, or  
29            decision and complies with any other terms thereof; and

30            (2) Such person complies with the terms and conditions of such permit,  
31            special order, consent special order, assurance of voluntary  
32            compliance, other document, or decision within the time limit, if any,  
33            specified therein or as the same may be extended, and thereafter  
34            remains in compliance."

35        Sec. 3. This act shall become effective October 1, 1989, and applies to all  
36 proposed consent orders entered into on or after that date.