

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 431

Short Title: Air Statute Housekeeping.

(Public)

Sponsors: Senator Staton.

Referred to: Environment and Natural Resources.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE OR CORRECT OBSOLETE CROSS-REFERENCES AND
MAKE OTHER TECHNICAL CORRECTIONS IN THE AIR QUALITY
STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"§ 143-211. Declaration of public policy.

It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this ~~Article~~, Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Natural Resources and Community Development as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural

1 attractions of the State, to encourage the expansion of employment opportunities, to
2 provide a permanent foundation for healthy industrial development and to secure for the
3 people of North Carolina, now and in the future, the beneficial uses of these great
4 natural resources. It is the intent of the General Assembly that the powers and duties of
5 the Environmental Management Commission and the Department of Natural Resources
6 and Community Development be construed so as to enable the Department and the
7 Commission to qualify to administer federally mandated programs of environmental
8 management and to qualify to accept and administer funds from the federal government
9 for such programs."

10 Sec. 2. G.S. 143-213 reads as rewritten:

11 **"§ 143-213. Definitions applicable to ~~Part~~Article.**

12 Unless the context otherwise requires, the following terms as used in this ~~Part~~Article
13 and Articles 21A and 21B of this Chapter are defined as follows:

- 14 (1) The term 'air cleaning device' means any method, process or
15 equipment which removes, reduces, or renders less noxious air
16 contaminants discharged into the atmosphere.
- 17 (2) The term 'air contaminant' means particulate matter, dust, fumes, gas,
18 mist, smoke, or vapor or any combination thereof.
- 19 (3) The term 'air contamination' means the presence in the outdoor
20 atmosphere of one or more air contaminants which contribute to a
21 condition of air pollution.
- 22 (4) The term 'air contamination source' means any source at, from, or by
23 reason of which there is emitted into the atmosphere any air
24 contaminant.
- 25 (5) The term 'air pollution' shall mean the presence in the outdoor
26 atmosphere of one or more air contaminants in such quantities and
27 duration as is or tends to be injurious to human health or welfare, to
28 animal or plant life or to property or that interferes with the enjoyment
29 of life or property.
- 30 (9) Whenever reference is made in this Article to the 'discharge of waste,'
31 it shall be interpreted to include the discharge of waste into any unified
32 sewerage system or arrangement for sewage disposal, which system or
33 arrangement in turn discharges the waste into the waters of the State.
- 34 (10) The term 'disposal system' means a system for disposing of waste, and
35 including sewer systems and treatment works.
- 36 (12) The term 'emission' means a release into the outdoor atmosphere of air
37 contaminants.
- 38 (13) The term 'outlet' means the terminus of a sewer system, or the point of
39 emergence of any waste or the effluent therefrom, into the waters of
40 the State.
- 41 (15) The term 'sewer system' means pipelines or conduits, pumping
42 stations, and force mains, and all other construction, devices, and
43 appliances appurtenant thereto, used for conducting wastes to a point
44 of ultimate disposal.

- 1 (16) The term 'standard' or 'standards' means such measure or measures of
2 the quality of water and air as are established by the Commission
3 pursuant to G.S. 143-214.1 and G.S. 143-215.
- 4 (17) The term 'treatment works' means any plant, septic tank disposal field,
5 lagoon, pumping station, constructed drainage ditch or surface water
6 intercepting ditch, incinerator, area devoted to sanitary landfill, or
7 other works not specifically mentioned herein, installed for the
8 purpose of treating, equalizing, neutralizing, stabilizing or disposing of
9 waste.
- 10 (18) 'Waste' shall mean and include the following:
- 11 a. 'Sewage,' which shall mean water-carried human waste
12 discharged, transmitted, and collected from residences,
13 buildings, industrial establishments, or other places into a
14 unified sewerage system or an arrangement for sewage disposal
15 or a group of such sewerage arrangements or systems, together
16 with such ground, surface, storm, or other water as may be
17 present.
- 18 b. 'Industrial waste' shall mean any liquid, solid, gaseous, or other
19 waste substance or a combination thereof resulting from any
20 process of industry, manufacture, trade or business, or from the
21 development of any natural resource.
- 22 c. 'Other waste' means sawdust, shavings, lime, refuse, offal, oil,
23 tar chemicals, and all other substances, except industrial waste
24 and sewage, which may be discharged into or placed in such
25 proximity to the water that drainage therefrom may reach the
26 water.
- 27 d. 'Toxic waste' means that waste, or combinations of wastes,
28 including disease-causing agents, which after discharge and
29 upon exposure, ingestion, inhalation, or assimilation into any
30 organism, either directly from the environment or indirectly by
31 ingestion through food chains, will cause death, disease,
32 behavioral abnormalities, cancer, genetic mutations,
33 physiological malfunctions (including malfunctions in
34 reproduction) or physical deformities, in such organisms or
35 their offspring.
- 36 (19) The term 'water pollution' means the man-made or man-induced
37 alteration of the chemical, physical, biological, or radiological integrity
38 of the waters of the State, including, but specifically not limited to,
39 alterations resulting from the concentration or increase of natural
40 pollutants caused by man-related activities.
- 41 (21) The term 'watershed' means a natural area of drainage, including all
42 tributaries contributing to the supply of at least one major waterway
43 within the State, the specific limits of each separate watershed to be
44 designated by the Commission.

- 1 (22) The term 'complex sources' means any facility which is or may be an
2 air pollution source or which will induce or tend to induce
3 development or activities which will or may be air pollution sources,
4 and which shall include, but not be limited to, shopping centers; sports
5 complexes; drive-in theaters; parking lots and garages; residential,
6 commercial, industrial or institutional developments; amusement parks
7 and recreation areas; highways; and any other facilities which will
8 result in increased emissions from motor vehicles or stationary
9 sources.
- 10 (23) The term 'effluent standards' or 'effluent limitations' means any
11 restrictions established pursuant to this Article on quantities, rates,
12 characteristics and concentrations of chemical, physical, biological and
13 other constituents of wastes which are discharged from any
14 pretreatment facility or from any outlet or point source to the waters of
15 the State.
- 16 (24) The term 'point source' means any discernible, confined, and discrete
17 conveyance, including, but specifically not limited to, any pipe, ditch,
18 channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
19 or concentrated animal-feeding operation from which wastes are or
20 may be discharged to the waters of the State.
- 21 (25) The term 'pretreatment facility' means any treatment works installed
22 for the purpose of treating, equalizing, neutralizing or stabilizing waste
23 from any source prior to discharge to any disposal system subject to
24 effluent standards or limitations.
- 25 (26) The term 'pretreatment standards' means effluent standards or
26 limitations applicable to waste discharged from a pretreatment facility.
- 27 (27) The term 'Federal Clean Air Act' refers to the Clean Air Act, 42
28 U.S.C. 7401 **et seq.**
- 29 (28) The term 'nonattainment area' refers to an area which is shown to
30 exceed any national ambient air quality standard for such pollutant.
- 31 (29) The term 'prevention of significant deterioration' refers to the statutory
32 and regulatory requirements arising from the Federal Clean Air Act
33 designed to prevent the significant deterioration of air quality in areas
34 with air quality better than required by the national ambient air quality
35 standards.
- 36 (30) The term 'waste treatment management practice' means any method,
37 measure or practice to control plant site runoff, spillage or leaks,
38 sludge or waste disposal and drainage from raw material storage which
39 are associated with, or ancillary to the industrial manufacturing or
40 treatment process of the class or category of point sources to which the
41 management practice is applied. Waste treatment management
42 practices may only be imposed, supplemental to effluent limitations,
43 for a class or category of point sources, for any specific pollutant

1 which has been designated as toxic or hazardous pursuant to sections
2 307(a)(1) or 311 of the Federal Water Pollution Control Act."

3 Sec. 3. G.S. 143-215.64 reads as rewritten:

4 **"§ 143-215.64. Purpose.**

5 The purpose of this ~~Part~~ Article is to require all persons who are subject to the
6 provisions of ~~G.S. 143-215.1~~ G.S. 143-215.1, 143-215.108, or 143-215.109 to file reports
7 with the Commission covering the discharge of waste and air contaminants to the waters
8 and outdoor atmosphere of the State and to establish and maintain approved systems for
9 monitoring the quantity and quality of such discharges and their effects upon the water
10 and air resources of the State."

11 Sec. 4. G.S. 143-215.65 reads as rewritten:

12 **"§ 143-215.65. Reports required.**

13 All persons subject to the provisions of ~~G.S. 143-215.1~~ G.S. 143-215.1, 143-215.108,
14 or 143-215.109 who discharge wastes to the waters or emit air contaminants to the
15 outdoor atmosphere of this State shall file at such frequencies as the Commission may
16 specify and at least quarterly reports with the Commission setting forth the volume and
17 characteristics of wastes discharged or air contaminants emitted daily or such other
18 period of time as may be specified by the Commission in its rules. Such reports shall be
19 filed on forms provided by the Department and approved by the Commission and shall
20 include such pertinent data with reference to the total and average volume of wastes or
21 air contaminants discharged, the strength and amount of each waste substance or air
22 contaminant discharged, the type and degree of treatment such wastes or air
23 contaminants received prior to discharge and such other information as may be specified
24 by the Commission in its rules. The information shall be used by the Commission only
25 for the purpose of air and water pollution control. The Department shall provide proper
26 and adequate facilities and procedures and the Commission shall adopt rules to
27 safeguard the confidentiality of proprietary manufacturing processes except that
28 confidentiality shall not extend to wastes discharged or air contaminants emitted."

29 Sec. 5. G.S. 143-215.66 reads as rewritten:

30 **"§ 143-215.66. Monitoring required.**

31 In order to provide for adequately monitoring the discharge of wastes to the waters
32 and the emission of contaminants to the outdoor atmosphere and their effects upon the
33 quality of the environment, all persons subject to the provisions of ~~G.S. 143-215.1~~ G.S.
34 143-215.1, 143-215.108, or 143-215.109 who cause such discharges or emissions shall
35 establish and maintain adequate water and air quality monitoring systems and report the
36 data obtained therefrom to the Commission. Each monitoring system shall include the
37 collection of water or air quality data as appropriate from such locations, in such detail,
38 and with such frequency as required by rule of the Commission for evaluating the
39 efficiency of treatment facilities or air-cleaning devices and the effects of the discharges
40 or emissions upon the waters and air resources of the State."

41 Sec. 6. G.S. 143-215.67(a) reads as rewritten:

42 "(a) No person subject to the provisions of ~~G.S. 143-215.1~~ G.S. 143-215.1, 143-
43 215.108, or 143-215.109 shall willfully cause or allow the discharge of any wastes or air
44 contaminants to a waste-disposal system or air-cleaning device in excess of the capacity

1 of the disposal system or cleaning device or any wastes or air contaminants which the
2 disposal system or cleaning device cannot adequately treat.

3 (b) The Commission may authorize a unit of government subject to the
4 provisions of G.S. 143-215.67(a) to accept additional wastes to its waste-disposal
5 system upon a finding by the Commission (i) that the unit of government has secured a
6 grant or has otherwise secured financing for planning, design, or construction of a new
7 or improved waste disposal system which will adequately treat the additional waste, and
8 (ii) the additional waste will not result in any significant degradation in the quality of
9 the waters ultimately receiving such discharge. The Commission may impose such
10 conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement
11 the provisions of this subsection, including conditions on the size, character, and
12 number of additional dischargers. Nothing in this subsection shall be deemed to
13 authorize a unit of government to violate water quality standards, effluent limitations or
14 the terms of any order or permit issued under Part 1 of this Article nor does anything
15 herein preclude the Commission from enforcing by appropriate means the provisions of
16 Part 1 of this Article."

17 Sec. 7. G.S. 143-215.112(a) reads as rewritten:

18 "(a) The Commission is authorized and directed to review and have general oversight
19 and supervision over all ~~existing or proposed~~ local air pollution control programs and to
20 this end shall review and certify such programs as being adequate to meet the
21 requirements of this Article ~~and or~~ Article 21 of this Chapter and any applicable
22 standards and rules adopted pursuant thereto. The Commission shall certify any local
23 program which:

- 24 (1) Provides by ordinance or local law for requirements compatible with
25 those imposed by the provisions of this Article ~~and or~~ Article 21, 21 of
26 this Chapter, and the standards and rules issued pursuant thereto;
27 provided, however, the Commission upon request of a municipality or
28 other local unit may grant special permission for the governing body of
29 such unit to adopt a particular class of air contaminant regulations
30 which would result in more effective air pollution control than
31 applicable standards or rules promulgated by the Commission;
- 32 (2) Provides for the adequate enforcement of such requirements by
33 appropriate administrative and judicial process;
- 34 (3) Provides for an adequate administrative organization, staff, financial
35 and other resources necessary to effectively and efficiently carry out
36 its programs; and
- 37 (4) Is approved by the Commission as adequate to meet the requirements
38 of this Article and any applicable rules pursuant thereto."

39 Sec. 8. G.S. 143-215.114 reads as rewritten: ♦

40 "**§ 143-215.114. Enforcement procedures.**

41 (a) Civil Penalties.

- 42 (1) A civil penalty of not more than five thousand dollars (\$5,000) may be
43 assessed against any person who:

- 1 a. Violates any classification, standard or limitation established
2 pursuant to G.S. 143-215.107;
- 3 b. Is required but fails to apply for or to secure a permit required
4 by G.S. 143-215.108 or who violates or fails to act in
5 accordance with the terms, conditions, or requirements of such
6 permit;
- 7 c. Violates or fails to act in accordance with the terms, conditions,
8 or requirements of any special order or other appropriate
9 document issued pursuant to G.S. 143-215.110;
- 10 d. Fails to file, submit, or make available, as the case may be, any
11 documents, data or reports required by this ~~Article~~; Article or
12 Article 21 of this Chapter;
- 13 f. Violates a rule of the Commission or a local governing body
14 implementing this Article.
- 15 (2) Each day of continuing violation after written notification from the
16 Commission shall be considered a separate offense.
- 17 (3) In determining the amount of the penalty the Commission shall
18 consider the degree and extent of harm caused by the violation, the
19 cost of rectifying the damage, and the amount of money the violator
20 saved by not having made the necessary expenditures to comply with
21 the appropriate pollution control requirements.
- 22 (4) The Commission, or, if authorized by the Commission, the
23 Department, may assess the penalties provided for in this subsection.
24 Any person assessed shall be notified of the assessment by registered
25 or certified mail, and the notice shall specify the reasons for the
26 assessment. If the person assessed fails to pay the amount of the
27 assessment to the Department within 30 days after receipt of notice, or
28 such longer period, not to exceed 180 days, as the Commission may
29 specify, the Commission may institute a civil action in the Superior
30 Court of Wake County to recover the amount of the assessment.
- 31 (b) Criminal Penalties.
- 32 (1) Any person who willfully or negligently violates any classification,
33 standard or limitation established pursuant to G.S. 143-215.107; any
34 term, condition, or requirement of a permit issued pursuant to G.S.
35 143-215.108 or of a special order or other appropriate document issued
36 pursuant to G.S. 143-215.110 or any rule of the Commission
37 implementing any of the said section, shall be guilty of a misdemeanor
38 punishable by a fine not to exceed fifteen thousand dollars (\$15,000)
39 per day of violation, provided that such fine shall not exceed a
40 cumulative total of two hundred thousand dollars (\$200,000) for each
41 period of 30 days during which a violation continues, or by
42 imprisonment not to exceed six months, or by both.
- 43 (2) Any person who knowingly makes any false statement, representation,
44 or certification in any application, record, report, plan, or other

1 document filed or required to be maintained under this Article ~~and or~~
2 Article 21, or a rule implementing this Article ~~and or~~ Article 21, or
3 who falsifies, tampers with, or knowingly renders inaccurate any
4 recording or monitoring device or method required to be operated or
5 maintained under this Article ~~and or~~ Article 21 or regulations of the
6 Commission implementing this Article ~~and or~~ Article 21, shall be
7 guilty of a misdemeanor punishable by a fine not to exceed ten
8 thousand dollars (\$10,000), or by imprisonment not to exceed six
9 months, or by both.

10 (3) Any person convicted of an offense under either subdivision (1) or
11 subdivision (2) of this subsection following a previous conviction
12 under such subdivision shall be subject to a fine, or imprisonment, or
13 both, not exceeding twice the amount of the fine or twice the term of
14 imprisonment provided in the subdivision under which the second or
15 subsequent conviction occurs.

16 (4) For purposes of this subsection, the term 'person' shall mean, in
17 addition to the definition contained in G.S. 143-213, any responsible
18 corporate or public officer or employee; provided, however, that where
19 a vote of the people is required to effectuate the intent and purpose of
20 this Article by a county, city, town, or other political subdivision of the
21 State, and the vote on the referendum is against the means or
22 machinery for carrying said intent and purpose into effect, then, and
23 only then, this subsection shall not apply to elected officials or to any
24 responsible appointed officials or employees of such county, city,
25 town, or political subdivision.

26 (c) Injunctive Relief. – Whenever the Department has reasonable cause to believe
27 that any person has violated or is threatening to violate any of the provisions of this
28 Article or Article 21 of this Chapter or a rule implementing this ~~Article, Article or~~
29 Article 21 of this Chapter, the Department, either before or after the institution of any
30 other action or proceeding authorized by this Article ~~and or~~ Article ~~21, 21 of this~~
31 Chapter, may request the Attorney General to institute a civil action in the name of the
32 State upon the relation of the Department for injunctive relief to restrain the violation or
33 threatened violation and for such other and further relief in the premises as the court
34 shall deem proper. The Attorney General may institute such action in the Superior Court
35 of Wake County, or, in his discretion, in the superior court of the county in which the
36 violation occurred or may occur. Upon a determination by the court that the alleged
37 violation of the provisions of this Article ~~and or~~ Article 21 of this Chapter or the
38 regulation of the Commission has occurred or is threatened, the court shall grant the
39 relief necessary to prevent or abate the violation or threatened violation. Neither the
40 institution of the action nor any of the proceedings thereon shall relieve any party to
41 such proceedings from any penalty prescribed for violation of this ~~Article, Article or~~
42 Article 21 of this Chapter."

43 Sec. 9. This act is effective upon ratification.