

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 431  
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Short Title: Air Statute Housekeeping.

(Public)

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Sponsors: Senator Staton.

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Referred to: Environment and Natural Resources.

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March 15, 1989

A BILL TO BE ENTITLED

1 AN ACT TO ELIMINATE OR CORRECT OBSOLETE CROSS-REFERENCES AND  
2 MAKE OTHER TECHNICAL CORRECTIONS IN THE AIR QUALITY  
3 STATUTES.  
4

5 The General Assembly of North Carolina enacts:

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

7 "**§ 143-211. Declaration of public policy.**

8 It is hereby declared to be the public policy of this State to provide for the  
9 conservation of its water and air resources. Furthermore, it is the intent of the General  
10 Assembly, within the context of this ~~Article~~, Article and Articles 21A and 21B of this  
11 Chapter, to achieve and to maintain for the citizens of the State a total environment of  
12 superior quality. Recognizing that the water and air resources of the State belong to the  
13 people, the General Assembly affirms the State's ultimate responsibility for the  
14 preservation and development of these resources in the best interest of all its citizens  
15 and declares the prudent utilization of these resources to be essential to the general  
16 welfare. It is the purpose of this Article to create an agency which shall administer a  
17 program of water and air pollution control and water resource management. It is the  
18 intent of the General Assembly, through the duties and powers defined herein, to confer  
19 such authority upon the Department of Natural Resources and Community Development  
20 as shall be necessary to administer a complete program of water and air conservation,  
21 pollution abatement and control and to achieve a coordinated effort of pollution

1 abatement and control with other jurisdictions. Standards of water and air purity shall be  
2 designed to protect human health, to prevent injury to plant and animal life, to prevent  
3 damage to public and private property, to insure the continued enjoyment of the natural  
4 attractions of the State, to encourage the expansion of employment opportunities, to  
5 provide a permanent foundation for healthy industrial development and to secure for the  
6 people of North Carolina, now and in the future, the beneficial uses of these great  
7 natural resources. It is the intent of the General Assembly that the powers and duties of  
8 the Environmental Management Commission and the Department of Natural Resources  
9 and Community Development be construed so as to enable the Department and the  
10 Commission to qualify to administer federally mandated programs of environmental  
11 management and to qualify to accept and administer funds from the federal government  
12 for such programs."

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

14 **"§ 143-213. Definitions applicable to Part Article.**

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

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

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

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

1 management practice is applied. Waste treatment management  
2 practices may only be imposed, supplemental to effluent limitations,  
3 for a class or category of point sources, for any specific pollutant  
4 which has been designated as toxic or hazardous pursuant to sections  
5 307(a)(1) or 311 of the Federal Water Pollution Control Act."

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

7 **"§ 143-215.64. Purpose.**

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

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

15 **"§ 143-215.65. Reports required.**

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

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

33 **"§ 143-215.66. Monitoring required.**

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

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

1       "(a) No person subject to the provisions of ~~G.S. 143-215.1~~ G.S. 143-215.1, 143-  
2 215.108, or 143-215.109 shall willfully cause or allow the discharge of any wastes or air  
3 contaminants to a waste-disposal system or air-cleaning device in excess of the capacity  
4 of the disposal system or cleaning device or any wastes or air contaminants which the  
5 disposal system or cleaning device cannot adequately treat.

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

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

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

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

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

43       "**§ 143-215.114. Enforcement procedures.**

- 44               (a) Civil Penalties.

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

- 1           (2) Any person who knowingly makes any false statement, representation,  
2 or certification in any application, record, report, plan, or other  
3 document filed or required to be maintained under this Article ~~and or~~  
4 Article 21, or a rule implementing this Article ~~and or~~ Article 21, or  
5 who falsifies, tampers with, or knowingly renders inaccurate any  
6 recording or monitoring device or method required to be operated or  
7 maintained under this Article ~~and or~~ Article 21 or regulations of the  
8 Commission implementing this Article ~~and or~~ Article 21, shall be  
9 guilty of a misdemeanor punishable by a fine not to exceed ten  
10 thousand dollars (\$10,000), or by imprisonment not to exceed six  
11 months, or by both.
- 12           (3) Any person convicted of an offense under either subdivision (1) or  
13 subdivision (2) of this subsection following a previous conviction  
14 under such subdivision shall be subject to a fine, or imprisonment, or  
15 both, not exceeding twice the amount of the fine or twice the term of  
16 imprisonment provided in the subdivision under which the second or  
17 subsequent conviction occurs.
- 18           (4) For purposes of this subsection, the term 'person' shall mean, in  
19 addition to the definition contained in G.S. 143-213, any responsible  
20 corporate or public officer or employee; provided, however, that where  
21 a vote of the people is required to effectuate the intent and purpose of  
22 this Article by a county, city, town, or other political subdivision of the  
23 State, and the vote on the referendum is against the means or  
24 machinery for carrying said intent and purpose into effect, then, and  
25 only then, this subsection shall not apply to elected officials or to any  
26 responsible appointed officials or employees of such county, city,  
27 town, or political subdivision.
- 28           (c) Injunctive Relief. – Whenever the Department has reasonable cause to believe  
29 that any person has violated or is threatening to violate any of the provisions of this  
30 Article or Article 21 of this Chapter or a rule implementing this ~~Article, Article or~~  
31 Article 21 of this Chapter, the Department, either before or after the institution of any  
32 other action or proceeding authorized by this Article ~~and or~~ Article 21, 21 of this  
33 Chapter, may request the Attorney General to institute a civil action in the name of the  
34 State upon the relation of the Department for injunctive relief to restrain the violation or  
35 threatened violation and for such other and further relief in the premises as the court  
36 shall deem proper. The Attorney General may institute such action in the Superior Court  
37 of Wake County, or, in his discretion, in the superior court of the county in which the  
38 violation occurred or may occur. Upon a determination by the court that the alleged  
39 violation of the provisions of this Article ~~and or~~ Article 21 of this Chapter or the  
40 regulation of the Commission has occurred or is threatened, the court shall grant the  
41 relief necessary to prevent or abate the violation or threatened violation. Neither the  
42 institution of the action nor any of the proceedings thereon shall relieve any party to  
43 such proceedings from any penalty prescribed for violation of this ~~Article, Article or~~  
44 Article 21 of this Chapter."



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