

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 886*

Short Title: State Auth./Fed. Clean Water Act.

(Public)

Sponsors: Representatives Nichols; Baker, Berry, Buchanan, Church, Davis, Edwards, McMahan, Pate, Preston, Reynolds, Russell, Sexton, and Weatherly.

Referred to: Health & Environment.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE APPROPRIATE STATE DEPARTMENTS HOW TO EXERCISE THE STATE'S AUTHORITY UNDER THE CLEAN WATER ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282(a)(1) reads as rewritten:

"(a) There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
- b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water

- 1 within such watershed or pollution of the air within the area for
2 which standards have been established;
- 3 c. To conduct and direct that investigations be conducted pursuant
4 to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
- 5 d. To conduct public hearings, institute actions in superior court,
6 and agree upon or enter into settlements, all pursuant to G.S.
7 143-215.3;
- 8 e. To direct the investigation of any killing of fish and wildlife
9 pursuant to G.S. 143-215.3;
- 10 f. To consult with any person proposing to construct, install, or
11 acquire an air or water pollution source pursuant to G.S. 143-
12 215.3 and G.S. 143-215.111;
- 13 g. To encourage local government units to handle air pollution
14 problems and to provide technical and consultative assistance
15 pursuant to G.S. 143-215.3 and G.S. 143-215.112;
- 16 h. To review and have general oversight and supervision over local
17 air pollution control programs pursuant to G.S. 143-215.3 and
18 G.S. 143-215.112;
- 19 i. To declare an emergency when it finds a generalized dangerous
20 condition of water or air pollution pursuant to G.S. 143-215.3;
- 21 j. To render advice and assistance to local government regarding
22 floodways pursuant to G.S. 143-215.56;
- 23 k. To declare and delineate and modify capacity use areas pursuant
24 to G.S. 143-215.13;
- 25 l. To grant permits for water use within capacity use areas pursuant
26 to G.S. 143-215.15;
- 27 m. To direct that investigations be conducted when necessary to
28 carry out duties regarding capacity use areas pursuant to G.S.
29 143-215.19;
- 30 n. To approve, disapprove and approve subject to conditions all
31 applications for dam construction pursuant to G.S. 143-215.28; to
32 require construction progress reports pursuant to G.S. 143-
33 215.29;
- 34 o. To halt dam construction pursuant to G.S. 143-215.29;
- 35 p. To grant final approval of dam construction work pursuant to
36 G.S. 143-215.30;
- 37 q. To have jurisdiction and supervision over the maintenance and
38 operation of dams pursuant to G.S. 143-215.31;
- 39 r. To direct the inspection of dams pursuant to G.S. 143-215.32;
- 40 s. To modify or revoke any final action previously taken by the
41 Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107;
42 and

1 t. To have jurisdiction and supervision over oil pollution pursuant
2 to Article 21A of Chapter 143.

3 u. To administer the State's authority under 33 U.S.C. § 1341 of the
4 federal Clean Water Act pursuant to G.S. 143-215.3(c1)-(c2)."

5 Sec. 2. G.S. 143-215.3 is amended by adding the following subsections to
6 read:

7 "(c1) General Exercise of Powers Granted Under Section 401 of the Clean Water
8 Act. – In determining whether to certify a federally issued permit or activity pursuant to
9 33 U.S.C. § 1341, the Secretary shall consider only those factors listed in 33 U.S.C. §
10 1341(a), and shall not condition or deny any request for such a certification based on any
11 other limitation, standard, or requirement contained in federal or State law. In making
12 the determination, the Secretary shall not use any guidelines or consider any criteria
13 employed by the United States Army Corps of Engineers in evaluating permit
14 applications under 33 U.S.C. § 1344 and applicable federal regulations.

15 (c2) Exercise of Authority Granted Under Federal Law With Regard to Wetlands. –
16 The Commission shall exercise its authority with regard to wetlands as follows:

17 (1) By July 1, 1996, the Commission shall promulgate by rule a wetlands
18 rating system to determine which wetlands qualify as unique wetlands
19 pursuant to subdivision (2) of this subsection. Prior to the initial
20 promulgation of the rules, if the Secretary determines that a proposed
21 project may impact wetlands, the Secretary shall provide the applicant
22 with a copy of any rating system to be applied to those wetlands.

23 (2) Water quality certification shall be granted by the Secretary for any
24 project that will impact less than one acre of unique wetlands, or that
25 will impact between one and three acres of unique wetlands, and the
26 applicant agrees to mitigate any resulting loss of wetlands from the
27 proposed project on a one-to-one ratio, acres lost to acres mitigated. For
28 purposes of this section, unique wetlands are those determined by the
29 Commission pursuant to G.S. 143-214.1 to be coastal salt water
30 wetlands or wetlands of exceptional State or national ecological
31 significance that require special protection to maintain existing uses.

32 (3) Water quality certification shall be granted by the Secretary for any
33 project that will impact less than three acres of any wetlands that do not
34 constitute unique wetlands.

35 (4) Water quality certification shall be granted for any project that will
36 impact wetlands or other waters of the State only through the discharge
37 of fill material into wetlands, unless: the Secretary finds that the
38 discharge of the fill material will result in 'significant degradation' as
39 defined under applicable federal regulations of any existing and
40 designated uses of any waters of the State (including the impacted
41 freshwater wetland body), and upon notice of the finding by the
42 Director, the applicant indicates an unwillingness to mitigate the loss of
43 wetlands at a one-to-one ratio, acres lost to acres mitigated. Any

1 mitigation required by the United States Army Corps of Engineers
2 under 33 U.S.C. § 1344 may be credited to the applicant for purposes of
3 meeting this mitigation option.

4 (5) No water quality certification shall be required for any dredge or fill
5 activities conducted in any wetlands that are inadvertently created
6 through any construction, mining, or other commercial activities."

7 Sec. 3. This act is effective upon ratification.