

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1580

Short Title: Environmental Excellence Agreement-1.

(Public)

Sponsors: Representatives Gibson; Mitchell and Culp.

Referred to: Environment and Natural Resources.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VOLUNTARY PROGRAM REGARDING ENVIRONMENTAL EXCELLENCE PROGRAM AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

“ARTICLE 17.

“ENVIRONMENTAL EXCELLENCE PROGRAM AGREEMENTS ACT.

“§ 113A-241. Title.

This Article may be cited as the Environmental Excellence Program Agreements Act.

“§ 113A-242. Purpose.

The purpose of this Article is to create a voluntary program whereby persons subject to environmental laws and the Secretary may enter into Environmental Excellence Program Agreements (EEPAs) and to direct agencies of the State to support and encourage the development of agreements that use innovative environmental measures or strategies not otherwise recognized or allowed under existing laws and rules to achieve results that represent environmental excellence. Agencies shall encourage EEPAs that favor or promote pollution prevention, source reduction, or improvements in practices that accomplish both of the following:

1 (1) The pollution prevention, source reduction, or improvements in
2 practices are transferable to other interested entities.

3 (2) The pollution prevention, source reduction, or improvements in
4 practices will achieve overall environmental results that are equal to or
5 better than those required by otherwise applicable rules and
6 requirements.

7 **"§ 113A-243. Definitions.**

8 For the purpose of this Article, the following definitions apply:

9 (1) 'Agency' means any State agency, board, department, division,
10 authority, or commission that administers environmental laws. Agency
11 also means any regional or local authority that administers
12 environmental laws pursuant to jurisdiction derived from the State.

13 (2) 'Director' means the individual or body of individuals in whom the legal
14 authority of an agency is vested by any provision of law. If the agency
15 head is a body of individuals, director means a majority of those
16 individuals.

17 (3) 'Environmental law' means all local, regional, or State statutes, rules, or
18 regulations affecting the environment, including the following
19 provisions of the General Statutes: Article 1 of Chapter 113; G.S. 113-
20 229; G.S. 113-230; Articles 4 and 7 of Chapter 113A; Articles 1, 1A,
21 10, and 11 of Chapter 130A; Parts 1, 2, 2A, 2B, 2C, and 2D of Article 9
22 of Chapter 130A; Articles 21, 21A, 21B, and 38 of Chapter 143;
23 Articles 1, 3, and 7 of Chapter 143B; all rules adopted pursuant to those
24 statutes, including Titles 10 and 15A of the North Carolina
25 Administrative Code; and any local or regional laws applying to the
26 same or similar environmental issues pursuant to authority delegated by
27 the General Assembly. Environmental laws do not include any
28 provisions of the General Statutes or of any municipal or county
29 ordinance that regulates the selection of a location for a new facility,
30 including swine farms, concentrated animal feeding operations, animal
31 waste management systems, and facilities operated for the off-site
32 treatment or disposal of radioactive or hazardous waste.

33 (4) 'Facility' means any site, any manufacturing or natural resource
34 management operation, or any business or municipal activity that is
35 regulated under any environmental laws.

36 (5) 'Secretary' means the Secretary of the Department of Environment and
37 Natural Resources.

38 (6) 'Sponsor' means a person, group, or association that submits a proposal
39 for an EEPA.

40 (7) 'Stakeholder' means any person or group of persons of common interest
41 directly or indirectly affected in his, her or its person, property, or
42 employment by an EEPA. Potential stakeholders include, but are not
43 limited to, employees and employee representatives, neighbors,

1 community and civic organizations, government agencies, trade and
2 business associations, and environmental organizations.

3 **"§ 113A-244. Authority to enter into environmental excellence program agreements**
4 **(EEPAs).**

5 (a) The Secretary may enter into any EEPA with any person subject to regulation
6 by environmental laws, even if one or more of the terms of the EEPA would be
7 inconsistent with an otherwise applicable environmental law or condition of an
8 environmental permit.

9 (b) The Secretary may designate the director of an agency to act for the Secretary
10 and to enter into EEPAs affecting or modifying environmental laws administered by that
11 agency. Where a sponsor proposes an EEPA that would affect or modify environmental
12 laws administered by more than one State agency, the Secretary may designate one or
13 more directors to enter into that EEPA, or the Secretary may enter into that EEPA on
14 behalf of the State.

15 (c) Where an agency has jurisdiction over environmental matters in a region of the
16 State and administers environmental laws, either directly or through the adoption of
17 regulations for that region, the director of that regional agency shall possess the
18 authorities and functions that the Secretary has under this Article, including the authority
19 to enter into an EEPA for the pertinent region if the EEPA will affect or modify
20 environmental laws administered by the regional agency.

21 **"§ 113A-245. Contents of proposed EEPA project.**

22 Any person owning or operating a facility subject to regulation under the
23 environmental laws may be a sponsor. A trade association or other authorized
24 representative of owners or operators of facilities subject to environmental laws may be a
25 sponsor for a programmatic EEPA for multiple facilities. Any person who is a sponsor
26 shall submit to the Department the following information and any other information
27 requested by the Secretary or a director designated under G.S. 113A-244:

28 (1) A statement that describes how the proposed EEPA is consistent with
29 the purpose of this Article and the criteria for approving an EEPA under
30 G.S. 143-215.115G.

31 (2) For a site-specific EEPA, a comprehensive description of the proposed
32 environmental excellence project that includes the nature of the facility
33 and the operations that will be affected, how the facility or operations
34 will achieve results that represent environmental excellence, and the
35 nature of the anticipated results.

36 (3) For a programmatic EEPA, a comprehensive description of the
37 proposed environmental excellence project that identifies the facilities
38 and the operations that are expected to participate, how participating
39 facilities or operations will achieve results that represent environmental
40 excellence, the nature of the results that will be achieved, and the
41 method to identify and document the commitments made by individual
42 participating facilities.

1 (4) A checklist that summarizes any environmental benefits or adverse
2 environmental impacts that will result if the proposal is approved and
3 implemented.

4 (5) The draft EEPA.

5 **"§ 113A-246. Stakeholder plan.**

6 Any EEPA must contain the sponsor's plan to identify and contact stakeholders, to
7 advise stakeholders of the facts and nature of the project, and to enable stakeholder
8 participation, review, and comment during development of the proposed EEPA. The
9 availability of periodic performance reviews submitted pursuant to G.S. 143-215.115F
10 shall be made available to stakeholders by the Secretary. The Secretary or sponsor shall
11 publish notice in the North Carolina Register and/or other media as appropriate of the
12 availability of periodic performance reviews within 30 days of receipt by the Secretary.

13 **"§ 113A-247. Terms and conditions of an EEPA.**

14 Any EEPA shall contain all of the following terms and conditions:

15 (1) Identification of all federal, State, and regional statutes, rules,
16 regulations, and any permits and permit requirements that are affected
17 by the EEPA.

18 (2) Any alternative or innovative approach to statutes, rules, and regulations
19 effected by the EEPA.

20 (3) A statement of the environmental excellence and innovation goals
21 established by the project, clearly identified as being in either of the
22 following categories:

23 a. Measures that create enforceable legal rights or obligations.

24 b. Overall project targets that do not create enforceable legal rights
25 or obligations.

26 (4) A statement describing how the EEPA will achieve the purpose of this
27 Article.

28 (5) A statement describing how the EEPA will be implemented, including a
29 list of implementation steps and an implementation schedule.

30 (6) A statement that the EEPA will not increase overall worker safety risks
31 or impose unjust or disproportionate environmental impacts.

32 (7) A statement that a stakeholder plan, as required by G.S. 113A-246, was
33 implemented.

34 (8) A statement describing how any participating facility will measure and
35 demonstrate its compliance with all environmental excellence and
36 innovation goals in the EEPA, including a description of the methods to
37 be used to monitor performance, criteria that represent acceptable
38 performance, and the method of reporting performance to the public.

39 (9) A description of and plan for public access to information needed to
40 assess any environmental benefits and any adverse environmental
41 impacts of the EEPA.

- 1 (10) A requirement to submit at least annually periodic performance reviews
- 2 of compliance with the EEPA to the Secretary or a director designated
- 3 pursuant to G.S. 113A-244 for review and approval within 30 days.
- 4 (11) Provisions for voluntary and involuntary termination of the EEPA.
- 5 (12) The duration of the EEPA and provisions for its renewal.
- 6 (13) Statements approving the EEPA made by or on behalf of the Secretary,
- 7 a director designated pursuant to G.S. 113A-244, and the sponsor.
- 8 (14) Additional terms, consistent with this Article, as requested by the
- 9 Secretary or a director designated pursuant to G.S. 113A-244.

10 **"§ 113A-248. Criteria for approving an EEPA.**

11 The Secretary or a director designated pursuant to G.S. 113A-244 shall not approve

12 an EEPA unless the EEPA will achieve one or more of the following:

- 13 (1) Emissions reductions or reductions in the discharge of wastes or
- 14 reductions in environmental risk that achieve better overall
- 15 environmental results at the participating facility than those required by
- 16 otherwise applicable environmental regulation.
- 17 (2) Compliance with applicable environmental standards or limitations in a
- 18 manner that is equal to or better than the method of compliance or the
- 19 method to demonstrate compliance required by applicable
- 20 environmental regulation or conditions of permits. A sponsor may
- 21 comply with this subdivision by demonstrating an innovative approach
- 22 or cost-effective results.

23 Prior to approval of an EEPA, the Secretary or a director designated pursuant to G.S.

24 113A-244 may require the sponsor to demonstrate the financial ability to implement the

25 EEPA. An EEPA may not be approved to remedy an ongoing state of noncompliance. In

26 reviewing proposed EEPAs, the Secretary or a director designated pursuant to G.S.

27 113A-244 shall give preference to proposals that include the implementation of effective

28 environmental management systems.

29 **"§ 113A-249. Incentives.**

30 The Secretary or a director designated pursuant to G.S. 113A-244 shall publish a list

31 of incentives that may be provided as part of an approved EEPA. The sponsor of an

32 EEPA may request that listed incentives be included in an EEPA in addition to, or in lieu

33 of, EEPA provisions that provide regulatory flexibility consistent with this act.

34 Incentives may include, but are not limited to, public recognition programs, tax credits,

35 preferred vendor status, streamlined record-keeping monitoring and reporting

36 requirements, extended permit intervals, expedited permit processing, and priority in

37 consideration for grant funds.

38 **"§ 113A-250. Public notice and comment.**

39 At least 30 days before entering into or modifying an EEPA, the Secretary or a

40 director designated pursuant to G.S. 113A-244 shall publish a notice of the proposed

41 agreement in a newspaper having general circulation in each county in which any facility

42 covered by the proposed EEPA is located. The notice shall contain a general description

43 of the proposed EEPA or modification of an EEPA, including an identification of the

1 facilities to be covered, the aspects of the project that constitute environmental
2 excellence, the regulatory flexibility requested by the sponsor, and an announcement that
3 the public has an opportunity to comment within 30 days after the notice is published.

4 **"§ 113A-251. Effect of an approved EEPA.**

5 (a) Any legal requirement under the environmental laws shall be superseded and
6 replaced by the terms and provisions of an approved EEPA to the extent that the EEPA
7 provides alternative means to define and achieve compliance. Any facility that is the
8 subject of an approved EEPA shall comply with the terms of the EEPA in lieu of the
9 environmental laws that are superseded and replaced by the approved EEPA. Superseded
10 and replaced legal requirements shall be clearly identified in the EEPA. In the event of
11 termination of an EEPA for nonperformance under G.S. 143-215.115L, the Secretary (or
12 director designated pursuant to G.S. 113A-244) shall require the sponsor to apply for a
13 permit or approval to comply with such identified superseded and replaced legal
14 requirements in accordance with the procedures of G.S. 143-215.115L.

15 (b) Any permit that is affected by an approved EEPA shall be revised by the
16 agency with jurisdiction over such permit in order to conform its terms to the pertinent
17 provisions of the approved EEPA. Permit revisions shall be completed within 60 days
18 after the effective date of the EEPA and shall comply with all applicable procedural
19 requirements, including, where applicable, public notice, the opportunity to comment,
20 and the opportunity for review and comment by federal agencies.

21 (c) Other than as superseded or replaced as provided in an approved EEPA, any
22 existing permit requirements remain in effect and are enforceable.

23 **"§ 113A-252. Judicial review.**

24 The decision to approve or disapprove a proposed EEPA is at the discretion of the
25 Secretary or a director designated pursuant to G.S. 113A-244. A decision to approve a
26 proposed EEPA or to terminate or modify an approved EEPA is a final decision in a
27 contested case and subject to judicial review pursuant to Article 4 of Chapter 150B of the
28 General Statutes. Any party seeking judicial review pursuant to this section shall be
29 deemed to have exhausted all administrative remedies made available by statute or
30 agency rule. To obtain judicial review pursuant to this section, any person seeking
31 review shall file a petition in Wake County Superior Court or in the superior court of the
32 county in which the facility subject to the EEPA is located. Any petition for review shall
33 be filed with the clerk of superior court within 30 days after the decision of the Secretary
34 or a director designated pursuant to G.S. 113A-244 is served upon the sponsor of the
35 EEPA.

36 **"§ 113A-253. Termination of EEPA for nonperformance.**

37 (a) The Secretary or a director designated pursuant to G.S. 113A-244 may, by
38 providing written notice to each party to the EEPA, terminate the EEPA in whole or in
39 part if, after notice and a reasonable opportunity to cure, a facility subject to the EEPA
40 fails to substantially perform any term or condition in an approved EEPA that prevents
41 achievement of the stated purposes set forth in G.S. 113A-242.

1 (b) The notice under subsection (a) of this section shall specify the extent to which
2 the EEPA is to be terminated, state the basis for termination, and provide a description of
3 the opportunity for judicial review of the decision to terminate the EEPA.

4 (c) After receipt of notice under this section, the sponsor has 60 days in which to
5 apply for any permit or approval affected by any terminated portion of the EEPA. An
6 application filed during the 60-day period is a timely application for renewal of a permit
7 under any applicable law. The terms and conditions of the EEPA shall continue in effect
8 until a final permit or approval is issued. If the sponsor fails to submit a timely or
9 complete application, any affected permit or approval may be modified at any time in a
10 manner that is consistent with applicable law.

11 **"§ 113A-254. Enforcement of environmental laws and EEPAs.**

12 (a) Nothing in this Article shall limit the authority of the Attorney General, a
13 prosecuting attorney, or a director to initiate a criminal, civil, or administrative action
14 against a person for any violation of any environmental requirement, except to the extent
15 that this Article provides that any environmental law is superseded and replaced by the
16 terms and provisions of an approved EEPA. A violation of a term or condition of an
17 approved EEPA listed in accordance with G.S. 113A-247(3)a. is subject to penalties and
18 remedies to the same extent as a violation of the applicable environmental law that it
19 supersedes pursuant to the EEPA.

20 (b) Except as provided in G.S. 113A-253(a), failure to meet the overall EEPA
21 project targets listed in accordance with G.S. 113A-247(3)b. shall not be subject to any
22 form of criminal or civil penalties, including penalties, orders, or any form of injunctive
23 relief.

24 (c) This Article does not create a private cause of action for citizen suits or
25 otherwise alter or amend other statutory provisions authorizing citizen suits.

26 **"§ 113A-255. Fees.**

27 An EEPA may contain a reduced fee schedule with respect to any program that
28 otherwise applies to the facilities subject to the EEPA.

29 **"§ 113A-256. State Environmental Policy Act; exemption.**

30 A decision to approve an EEPA or terminate or modify an approved EEPA shall not
31 be subject to the requirements of the North Carolina Environmental Policy Act of 1971,
32 Article 1 of Chapter 113A of the General Statutes.

33 **"§ 113A-257. Rule making.**

34 Any State, regional, or local agency administering programs pursuant to an
35 environmental law may adopt rules or ordinances to implement this Article. An agency
36 need not adopt rules or ordinances in order to consider or enter into an EEPA."

37 Section 2. This act becomes effective July 1, 1999.