

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 135
SENATE BILL 431

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

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

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

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

- (1) The term 'air cleaning device' means any method, process or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.
- (2) The term 'air contaminant' means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof.
- (3) The term 'air contamination' means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.
- (4) The term 'air contamination source' means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant.
- (5) The term 'air pollution' shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, to animal or plant life or to property or that interferes with the enjoyment of life or property.
- (9) Whenever reference is made in this Article to the 'discharge of waste,' it shall be interpreted to include the discharge of waste into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.
- (10) The term 'disposal system' means a system for disposing of waste, and including sewer systems and treatment works.
- (12) The term 'emission' means a release into the outdoor atmosphere of air contaminants.
- (13) The term 'outlet' means the terminus of a sewer system, or the point of emergence of any waste or the effluent therefrom, into the waters of the State.
- (15) The term 'sewer system' means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.
- (16) The term 'standard' or 'standards' means such measure or measures of the quality of water and air as are established by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.
- (17) The term 'treatment works' means any plant, septic tank disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other works not specifically mentioned herein, installed for the purpose of treating, equalizing, neutralizing, stabilizing or disposing of waste.
- (18) 'Waste' shall mean and include the following:

- a. 'Sewage,' which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.
 - b. 'Industrial waste' shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.
 - c. 'Other waste' means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.
 - d. 'Toxic waste' means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring.
- (19) The term 'water pollution' means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State, including, but specifically not limited to, alterations resulting from the concentration or increase of natural pollutants caused by man-related activities.
- (21) The term 'watershed' means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Commission.
- (22) The term 'complex sources' means any facility which is or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources, and which shall include, but not be limited to, shopping centers; sports complexes; drive-in theaters; parking lots and garages; residential, commercial, industrial or institutional developments; amusement parks and recreation areas; highways; and any other facilities which will result in increased emissions from motor vehicles or stationary sources.

- (23) The term 'effluent standards' or 'effluent limitations' means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State.
- (24) The term 'point source' means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the waters of the State.
- (25) The term 'pretreatment facility' means any treatment works installed for the purpose of treating, equalizing, neutralizing or stabilizing waste from any source prior to discharge to any disposal system subject to effluent standards or limitations.
- (26) The term 'pretreatment standards' means effluent standards or limitations applicable to waste discharged from a pretreatment facility.
- (27) The term 'Federal Clean Air Act' refers to the Clean Air Act, 42 U.S.C. 7401 **et seq.**
- (28) The term 'nonattainment area' refers to an area which is shown to exceed any national ambient air quality standard for such pollutant.
- (29) The term 'prevention of significant deterioration' refers to the statutory and regulatory requirements arising from the Federal Clean Air Act designed to prevent the significant deterioration of air quality in areas with air quality better than required by the national ambient air quality standards.
- (30) The term 'waste treatment management practice' means any method, measure or practice to control plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage which are associated with, or ancillary to the industrial manufacturing or treatment process of the class or category of point sources to which the management practice is applied. Waste treatment management practices may only be imposed, supplemental to effluent limitations, for a class or category of point sources, for any specific pollutant which has been designated as toxic or hazardous pursuant to sections 307(a)(1) or 311 of the Federal Water Pollution Control Act."

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

"§ 143-215.64. Purpose.

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

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

"§ 143-215.65. Reports required.

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

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

"§ 143-215.66. Monitoring required.

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

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

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

(b) The Commission may authorize a unit of government subject to the provisions of G.S. 143-215.67(a) to accept additional wastes to its waste-disposal system upon a finding by the Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving such discharge. The Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement

the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article."

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

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

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

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

"§ 143-215.114. Enforcement procedures.

(a) Civil Penalties.

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed against any person who:
 - a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;
 - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;

- d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this ~~Article~~; Article or Article 21 of this Chapter;
 - f. Violates a rule of the Commission or a local governing body implementing this Article.
- (2) Each day of continuing violation after written notification from the Commission shall be considered a separate offense.
 - (3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.
 - (4) The Commission, or, if authorized by the Commission, the Department, may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment.
- (b) Criminal Penalties.
- (1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the Commission implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.
 - (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article ~~and or~~ Article 21, or a rule implementing this Article ~~and or~~ Article 21, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article ~~and or~~ Article 21 or regulations of the Commission implementing this Article ~~and or~~ Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

- (3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.
- (4) For purposes of this subsection, the term 'person' shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

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

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1989.