

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 970

Short Title: Waste Permit/Local Consideration.

(Public)

Sponsors: Senator Shaw.

Referred to: Environment and Natural Resources.

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOCAL OFFICIALS BE NOTIFIED BY MAIL OF AN APPLICATION FOR A WASTEWATER PERMIT AND TO PROVIDE THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL DENY OR ATTACH CONDITIONS TO A PERMIT THAT ALLOWS A DISCHARGE OR USE THAT IS INCONSISTENT WITH LOCAL LAND-USE PLANS OR ZONING ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1 reads as rewritten:

"§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. – No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Make any outlets into the waters of the State;
(2) Construct or operate any sewer system, treatment works, or disposal system within the State;
(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely

- 1 affect the condition of the receiving waters to the extent of violating
2 any of the standards applicable to such water;
- 3 (5) Change the nature of the waste discharged through any disposal
4 system in any way which would exceed the effluent standards or
5 limitations established for any point source or which would adversely
6 affect the condition of the receiving waters in relation to any of the
7 standards applicable to such waters;
- 8 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
9 in any manner intermixed with the waters of the State in violation of
10 the water quality standards applicable to the assigned classifications or
11 in violation of any effluent standards or limitations established for any
12 point source, unless allowed as a condition of any permit, special order
13 or other appropriate instrument issued or entered into by the
14 Commission under the provisions of this Article;
- 15 (7) Cause or permit any wastes for which pretreatment is required by
16 pretreatment standards to be discharged, directly or indirectly, from a
17 pretreatment facility to any disposal system or to alter, extend or
18 change the construction or method of operation or increase the
19 quantity or change the nature of the waste discharged from or
20 processed in such facility;
- 21 (8) Enter into a contract for the construction and installation of any outlet,
22 sewer system, treatment works, pretreatment facility or disposal
23 system or for the alteration or extension of any such facilities;
- 24 (9) Dispose of sludge resulting from the operation of a treatment works,
25 including the removal of in-place sewage sludge from one location and
26 its deposit at another location, consistent with the requirement of the
27 Resource Conservation and Recovery Act and regulations promulgated
28 pursuant thereto;
- 29 (10) Cause or permit any pollutant to enter into a defined managed area of
30 the State's waters for the maintenance or production of harvestable
31 freshwater, estuarine, or marine plants or animals.

32 In the event that both effluent standards or limitations and classifications and water
33 quality standards are applicable to any point source or sources and to the waters to
34 which they discharge, the more stringent among the standards established by the
35 Commission shall be applicable and controlling.

36 In connection with the above, no such permit shall be granted for the disposal of
37 waste in waters classified as sources of public water supply where the Department of
38 Human Resources, after review of the plans and specifications for the proposed disposal
39 facility, determines and advises the Commission that such disposal is sufficiently close
40 to the intake works or proposed intake works of a public water supply as to have an
41 adverse effect on the public health.

42 In any case where the Commission denies a permit, it shall state in writing the
43 reason for such denial and shall also state the Commission's estimate of the changes in

1 the applicant's proposed activities or plans which will be required in order that the
2 applicant may obtain a permit.

3 (b) Commission's Power as to Permits. – The Commission shall act on all permits
4 so as to prevent, so far as reasonably possible, considering relevant standards under
5 State and federal laws, any significant increase in pollution of the waters of the State
6 from any new or enlarged sources. The Commission shall also act on all permits to
7 prevent a discharge that is inconsistent with a local land-use plan or local zoning
8 ordinance.

9 The Commission shall have the power:

- 10 (1) To grant a permit with such conditions attached as the Commission
11 believes necessary to achieve the purposes of this Article;
12 (1a) To require that an applicant satisfy the Commission that the applicant,
13 or any parent or subsidiary corporation if the applicant is a
14 corporation:
15 a. Is financially qualified to carry out the activity for which the
16 permit is required under subsection (a); and
17 b. Has substantially complied with the effluent standards and
18 limitations and waste management treatment practices
19 applicable to any activity in which the applicant has previously
20 engaged, and has been in substantial compliance with other
21 federal and state laws, regulations, and rules for the protection
22 of the environment;
23 (2) Repealed by Session Laws 1975, c. 583, s. 4.
24 (3) To modify or revoke any permit upon not less than 60 days' written
25 notice to any person affected.

26 No permit shall be denied and no condition shall be attached to the permit, except as
27 follows: (i) when the Commission finds such denial or such conditions necessary to
28 effectuate the purposes of this Article. Article, or (ii) when the proposed discharge is
29 inconsistent with a local land-use plan or local zoning ordinance.

30 (c) Applications for Permits and Renewals for Facilities Discharging to the
31 Surface Waters. –

- 32 (1) All applications for permits and for renewal of existing permits for
33 outlets and point sources and for treatment works and disposal systems
34 discharging to the surface waters of the State shall be in writing, and
35 the Commission may prescribe the form of such applications. All
36 applications shall be filed with the Commission at least 180 days in
37 advance of the date on which it is desired to commence the discharge
38 of wastes or the date on which an existing permit expires, as the case
39 may be. A person applying for a permit under this subsection shall
40 send notice by first-class mail to the county or city manager, county
41 health director, and city or county planning director of the county or
42 city in which the discharge will occur, and to persons owning property
43 adjacent to the site of the proposed discharge location. A person

1 applying for a permit under this subsection shall also post notice of the
2 application on the property that may be affected by the discharge.

3 The Commission shall act on a permit application as quickly as
4 possible. The Commission may conduct any inquiry or investigation it
5 considers necessary before acting on an application and may require an
6 applicant to submit plans, specifications, and other information the
7 Commission considers necessary to evaluate the application.

- 8 (2) a. The Department shall refer each application for permit, or renewal
9 of an existing permit, for outlets and point sources and treatment
10 works and disposal systems discharging to the surface waters of the
11 State to its staff for written evaluation and proposed determination
12 with regard to issuance or denial of the permit. If the Commission
13 concurs in the proposed determination, it shall cause notice of the
14 application and of the proposed determination, along with any other
15 data that the Commission may determine appropriate, to be given to
16 the appropriate State, interstate and federal agencies, to interested
17 persons, and to the public. The Commission shall prescribe the form
18 and content of the notice.

19 The notice required herein shall be given at least 45 days
20 prior to any proposed final action granting or denying the
21 permit. Public notice shall be given by publication of the notice
22 one time in a newspaper having general circulation within the
23 county.

24 b. Repealed by Session Laws 1987, c. 734.

- 25 (3) If any person desires a public meeting on any application for permit or
26 renewal of an existing permit provided for in this subsection, he shall
27 so request in writing to the Commission within 30 days following date
28 of the notice of application. The Commission shall consider all such
29 requests for meeting, and if the Commission determines that there is a
30 significant public interest in holding such meeting, at least 30 days'
31 notice of such meeting shall be given to all persons to whom notice of
32 application was sent and to any other person requesting notice. At
33 least 30 days prior to the date of meeting, the Commission shall also
34 cause a copy of the notice thereof to be published at least one time in a
35 newspaper having general circulation in such county. The
36 Commission shall prescribe the form and content of the notices.

37 The Commission shall prescribe the procedures to be followed in
38 such meetings. If the meeting is not conducted by the Commission,
39 detailed minutes of the meeting shall be kept and shall be submitted,
40 along with any other written comments, exhibits or documents
41 presented at the meeting, to the Commission for its consideration prior
42 to final action granting or denying the permit.

- 43 (4) Not later than 60 days following notice of application or, if a public
44 hearing is held, within 90 days following consideration of the matters

1 and things presented at such hearing, the Commission shall grant or
2 deny any application for issuance of a new permit or for renewal of an
3 existing permit. All permits or renewals issued by the Commission and
4 all decisions denying application for permit or renewal shall be in
5 writing.

6 (5) No permit issued pursuant to this subsection (c) shall be issued or
7 renewed for a term exceeding five years.

8 (d) Applications and Permits for Sewer Systems, Sewer System Extensions and
9 Pretreatment Facilities, and for Wastewater Treatment Facilities Not Discharging to the
10 Surface Waters of the State. –

11 (1) All applications for new permits and for renewals of existing permits
12 for sewer systems, sewer system extensions and for disposal systems
13 or treatment works which do not discharge to the surface waters of the
14 State, and all permits or renewals and decisions denying any
15 application for permit or renewal shall be in writing. The Commission
16 shall act on a permit application as quickly as possible. The
17 Commission may conduct any inquiry or investigation it considers
18 necessary before acting on an application and may require an applicant
19 to submit plans, specifications, and other information the Commission
20 considers necessary to evaluate the application. The Commission shall
21 deny a permit that allows a use that is inconsistent with a local land-
22 use plan or local zoning ordinance. If the Commission fails to act on
23 an application for a permit, including a renewal of a permit, within 90
24 days after the applicant submits all information required by the
25 commission, the application is considered to be approved. Permits and
26 renewals issued in approving such facilities pursuant to this subsection
27 (d) shall be effective until the date specified therein or until rescinded
28 unless modified or revoked by the Commission. Local governmental
29 units to whom pretreatment program authority has been delegated shall
30 establish, maintain, and provide to the public, upon written request, a
31 list of pretreatment applications received.

32 (2) A person applying for a permit under this subsection shall send notice
33 by first-class mail to the county or city manager, county health
34 director, and city or county planning director of the county or city in
35 which the discharge will occur, and to persons owning property
36 adjacent to the site of the proposed discharge location. A person
37 applying for a permit under this subsection shall also post notice of the
38 application on the property that may be affected by the discharge.

39 (d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof)
40 for the operation of a treatment works for a private multi-family or single family
41 residential development, in which the owners of individual residential units are required
42 to organize as a lawfully constituted and incorporated homeowners' association of a
43 subdivision, condominium, planned unit development, or townhouse complex, shall be
44 required to enter into an operational agreement with the Commission as a condition of

1 any such permit granted. The agreement shall address, as necessary, construction,
2 operation, maintenance, assurance of financial solvency, transfers of ownership and
3 abandonment of the plant, systems, or works, and shall be modified as necessary to
4 reflect any changed condition at the treatment plant or in the development. Where the
5 Commission finds appropriate, it may require any other private residential subdivision,
6 condominium, planned unit development or townhouse complex which is served by a
7 private treatment works and does not have a lawfully constituted and incorporated
8 homeowners' association, and for which an applicant applies for a permit or the renewal
9 thereof under subsections (c) or (d), to incorporate as a lawfully constituted
10 homeowners' association, and after such incorporation, to enter into an operational
11 agreement with the Commission and the applicant as a condition of any permit granted
12 under subsections (c) or (d). The local government unit or units having jurisdiction over
13 the development shall receive notice of the application within an established comment
14 period and prior to final decision.

15 (e) Administrative Review. – A permit applicant or permittee who is dissatisfied
16 with a decision of the Commission may commence a contested case by filing a petition
17 under G.S. 150B-23 within 30 days after the Commission notifies the applicant or
18 permittee of its decision. If the permit applicant or permittee does not file a petition
19 within the required time, the Commission's decision is final and is not subject to review.

20 (f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local
21 boards or commissions, water and sewer authorities, or groups of municipalities and
22 counties may establish and administer within their utility service areas their own general
23 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)
24 above, for construction, operation, alteration, extension, change of proposed or existing
25 sewer system, subject to the prior certification of the Commission. For purposes of this
26 subsection, the service area of a municipality shall include only that area within the
27 corporate limits of the municipality and that area outside a municipality in its
28 extraterritorial jurisdiction where sewer service is already being provided by the
29 municipality to the permit applicant or connection to the municipal sewer system is
30 immediately available to the applicant; the service areas of counties and the other
31 entities or groups shall include only those areas where sewer service is already being
32 provided to the applicant by the permitting authority or connection to the permitting
33 authority's system is immediately available. No later than the 180th day after the receipt
34 of a program and statement submitted by any local government, commission, authority,
35 or board the Commission shall certify any local program that:

- 36 (1) Provides by ordinance or local law for requirements compatible with
37 those imposed by this Part and the rules implementing this Part;
- 38 (2) Provides that the Department receives notice and a copy of each
39 application for a permit and that it receives copies of approved permits
40 and plans;
- 41 (3) Provides that plans and specifications for all construction, extensions,
42 alterations, and changes be prepared by or under the direct supervision
43 of an engineer licensed to practice in this State;

- 1 (4) Provides for the adequate enforcement of the program requirements by
2 appropriate administrative and judicial process;
- 3 (5) Provides for the adequate administrative organization, engineering
4 staff, financial and other resources necessary to effectively carry out its
5 plan review program;
- 6 (6) Provides that the system is capable of interconnection at an
7 appropriate time with an expanding municipal, county, or regional
8 system;
- 9 (7) Provides for the adequate arrangement for the continued operation,
10 service, and maintenance of the sewer system; and
- 11 (8) Is approved by the Commission as adequate to meet the requirements
12 of this Part and the rules implementing this Part.

13 The Commission may deny, suspend, or revoke certification of a local program upon
14 a finding that a violation of the provisions in subsection (f) of this section has
15 occurred. A denial, suspension, or revocation of a certification of a local program shall
16 be made only after notice and a public hearing. If the failure of a local program to carry
17 out this subsection creates an imminent hazard, the Commission may summarily revoke
18 the certification of the local program. Chapter 150B of the General Statutes does not
19 apply to proceedings under this subsection.

20 Notwithstanding any other provision of this subsection, if the Commission
21 determines that a sewer system, treatment works, or disposal system is operating in
22 violation of the provisions of this Article and that the appropriate local authorities have
23 not acted to enforce those provisions, the Commission may, after written notice to the
24 appropriate local government, take enforcement action in accordance with the
25 provisions of this Article.”

26 Sec. 2. This act shall become effective October 1, 1989.