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(Public)

Sponsors:

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April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THOSE PORTIONS OF THE GENERAL STATUTES THAT
LIMIT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO THE
ADOPTION OF ENVIRONMENTAL RULES REGARDING WATER QUALITY
AND AIR QUALITY THAT ARE NO MORE RESTRICTIVE THAN FEDERAL
ENVIRONMENTAL REGULATIONS TO PROVIDE THAT AN ASSESSMENT
OF THE IMPACT OF SUCH RULES BE PREPARED BEFORE SUCH RULES
ARE ADOPTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215 reads as rewritten:

"§ 143-215. Effluent standards and limitations.

(a) The Commission is authorized and directed to develop, adopt, modify and
revoke effluent standards and limitations and waste treatment management practices as
it determines necessary to prohibit, abate, or control water pollution. The effluent
standards or limitations or management practices may provide, without limitation,
standards or limitations or management practices for any point source or sources;
standards, limitations, management practices, or prohibitions for toxic wastes or
combinations of toxic wastes discharged from any point source or sources; and
pretreatment standards for wastes discharged to any disposal system subject to effluent
standards or limitations or management practices.

(b) The effluent standards and limitations developed and adopted by the
Commission shall provide limitations upon the effluents discharged from pretreatment

1 facilities and from outlets and point sources to the waters of the State adequate to limit
2 the waste loads upon the waters of the State to the extent necessary to maintain or
3 enhance the chemical, physical, biological and radiological integrity of the waters. The
4 management practices developed and adopted by the Commission shall prescribe
5 practices necessary to be employed in order to prevent or reduce contribution of
6 pollutants to the State's waters.

7 (c) (1) In adopting effluent standards and limitations and
8 management practices the Commission shall be guided by the same
9 considerations and criteria set forth, from time to time, in federal law
10 for the guidance of federal agencies administering the Federal Water
11 Pollution Control Program. ~~It is the intent of the General Assembly that~~
12 ~~the Act.~~ The effluent standards and limitations and management
13 practices adopted hereunder shall be no more restrictive than the
14 most nearly applicable federal effluent standards and limitations and
15 management practices—practices unless the Commission first
16 considers, among other things, an assessment, prepared by the
17 Department in accordance with this subsection, of the impact of the
18 proposed effluent standards and limitations and management
19 practices and finds that the environmental, public health, safety and
20 welfare benefits of such proposed effluent standards and limitations
21 and management practices justify their costs.

22 (2) The Department shall prepare and submit into the record of the rule-
23 making hearing an assessment of the proposed standards and
24 limitations and management practices. The study shall include an
25 estimate of the economic and social costs to commerce and industry,
26 units of local government, and agriculture to comply with the proposed
27 standards and limitations and management practices and an
28 examination of the environmental, public health, safety and welfare
29 benefits from the proposed effluent standards and limitations and
30 management practices. The assessment shall present relevant data,
31 assumptions, analysis, and calculations in sufficient detail to allow the
32 agency and any reviewing person or entity to understand the
33 information presented. The assessment shall be as extensive as is
34 practicable, in the judgment of the agency, taking into account the time
35 and resources available to the agency and the other duties which the
36 agency is required to carry out.

37 (3) In preparing the assessment required by this subsection, the
38 Department may call upon any agency of the State government, the
39 Agricultural Extension Service and the institutions of The University
40 of North Carolina regarding the acquisition and analysis of data
41 necessary to prepare the assessment required by this subsection.

42 (4) The assessment required by this subsection shall take into account the
43 uncertainties associated with the estimation of benefits and costs and
44 the difficulties involved in the comparison of qualitatively and

quantitatively dissimilar benefits and costs. Benefits and costs which cannot be quantified may be expressed in qualitative terms.

(5) This subsection shall not be interpreted to require a numerical cost-benefit analysis nor to require an assessment that is inconsistent with federal law or regulation. Nothing in this subsection shall be construed to either alter the basis on which a standard or rule is promulgated or preclude an agency from carrying out its responsibility to protect public health and welfare. Limits and conditions to protect water quality standards that are included in permits issued under this Article are not subject to the requirements of this subsection.

(6) In any judicial review of the rule that is the subject of the study, the entry into the record before the court of the finding as to such impacts by the Commission creates a rebuttable presumption that the environmental, public health, safety and welfare benefits from the proposed effluent standards and limitations and management practices exceed their social and economic costs. To overcome the presumption, persons challenging the rule must present clear and convincing evidence that the benefits of the agency rule do not justify the costs.

(7) This subsection does not require that an assessment be prepared for any rule for which there is no comparable federal standard.

(d) ~~Notwithstanding the provisions of subsection (c) of this section, the Environmental Management~~ The Commission may adopt rules applicable to any facility which that is sited or operated pursuant to Chapter 130B of the General Statutes which that incorporate standards and restrictions which limitations and management practices that exceed and are more comprehensive than comparable federal regulations. The procedures set out in subsection (c) of this section do not apply to the adoption of such rules.

(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (1 July 1990 Edition) shall apply to this subsection."

Sec. 2. G.S. 143-215.107 reads as rewritten:

"§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

- 1 (3) To develop and adopt, after proper study, air quality standards
2 applicable to the State as a whole or to any designated area of the State
3 as the Commission deems proper in order to promote the policies and
4 purposes of this Article and Article 21 most effectively.
- 5 (4) To collect information or to require reporting from classes of sources
6 which, in the judgment of the Environmental Management
7 Commission, may cause or contribute to air pollution. Any person
8 operating or responsible for the operation of air contaminant sources of
9 any class for which the Commission requires reporting shall make
10 reports containing such information as may be required by the
11 Commission concerning location, size, and height of contaminant
12 outlets, processes employed, fuels used, and the nature and time
13 periods or duration of emissions, and such other information as is
14 relevant to air pollution and available or reasonably capable of being
15 assembled.
- 16 (5) To develop and adopt such emission control standards as in the
17 judgment of the Commission may be necessary to prohibit, abate or
18 control air pollution commensurate with established air quality
19 standards. Such standards may be applied uniformly to the State as a
20 whole or to any area of the State designated by the Commission.
- 21 (6) To adopt, when necessary and practicable, a program for testing
22 emissions from motor vehicles and to adopt motor vehicle emission
23 standards in compliance with applicable federal regulations.
- 24 (7) To develop and adopt standards and plans necessary to implement
25 programs for the prevention of significant deterioration and for the
26 attainment of air quality standards in nonattainment areas; ~~provided, that~~
27 ~~the Commission shall adopt no standard which is not made mandatory upon~~
28 ~~approved State programs by rules, regulations or published guidelines of the~~
29 ~~United States Environmental Protection Agency or the Federal Clean Air~~
30 ~~Act areas.~~

31 (b) Criteria for Standards. – In developing air quality and emission control
32 standards, the Commission shall recognize varying local conditions and requirements
33 and may prescribe different standards for different areas as may be necessary and
34 appropriate to facilitate accomplishment of the stated purposes of this Article and
35 Article 21.

36 (c) Chapter 150B of the General Statutes governs the adoption and publication of
37 rules under this Article.

38 ~~(f) Guidance of Federal Criteria and Legislative Intent. — In adopting air quality~~
39 ~~policies, rules, and procedures, the Commission or any other State or local regulatory~~
40 ~~body shall be guided by the same standards, definitions, considerations and criteria set~~
41 ~~forth, from time to time, in federal law, rules or regulations for the guidance of federal,~~
42 ~~State or local agencies administering the Federal Clean Air Program.~~

43 It is the intent of the General Assembly (i) that the air quality rules, procedures,
44 plans, practices, air quality standards, and emission control standards

- 1 (1) Air emission standards and limitations and management practices
2 adopted by the Commission pursuant to this Article or Article 21, or
3 by any other State or local regulatory body under the General Statutes of
4 North Carolina, shall be no more restrictive and no more stringent than
5 required to comply with federal ambient air quality standards or other
6 applicable federal requirements, if any, adopted in final or proposed
7 regulations by the United States Environmental Protection Agency under or
8 pursuant to the Federal Clean Air Act, and amendments thereto; except (ii)
9 that no air quality rules, procedures, plans, practices, air quality standards or
10 emission control standards shall be adopted by the Commission with respect
11 to matters on which the United States Environmental Protection Agency has
12 not proposed or adopted final regulations requirements unless the
13 Commission first considers, among other things, an assessment of the
14 economic impact of the proposed standards. air emission standards and
15 limitations and management practices and finds that the benefits of
16 such proposed air emission standards and limitations and management
17 practices justify their costs.
- 18 (2) The Department shall prepare and submit into the record of the rule-
19 making hearing an economic impact study assessment, prepared by the
20 Department in accordance with this subsection, of such proposed
21 standards. Such The study shall include an estimate of the economic
22 and social costs to commerce and industry, units of local government,
23 and agriculture necessary to comply with the proposed standards and an
24 examination of the economic and social benefits of such compliance. their
25 environmental, public health, safety, and welfare benefits. The
26 assessment shall present relevant data, assumptions, analysis, and
27 calculations in sufficient detail to allow the agency and any reviewing
28 person or entity to understand the information presented. The
29 assessment shall be as extensive as is practicable, in the judgment of
30 the agency, taking into account the time and resources available to the
31 agency and the other duties which the agency is required to carry out.
- 32 (3) In preparing the assessment required by this subsection, the
33 Department may call upon any agency of the State government, the
34 Agricultural Extension Service, and the institutions of The University
35 of North Carolina regarding the acquisition and analysis of data
36 necessary to prepare the assessment required by this subsection.
- 37 (4) The assessment required by this subsection shall take into account the
38 uncertainties associated with the estimation of benefits and costs and
39 the difficulties involved in the comparison of qualitatively and
40 quantitatively dissimilar benefits and costs. Benefits and costs which
41 cannot be quantified may be expressed in qualitative terms.
- 42 (5) This subsection shall not be interpreted to require a numerical cost-
43 benefit analysis nor to require an assessment that is inconsistent with
44 federal law or regulation. Nothing in this subsection shall be
45 construed to either alter the basis on which a standard or rule is

1 promulgated or preclude an agency from carrying out its responsibility
2 to protect public health and welfare. Nothing in this subsection shall
3 be construed to require that an assessment be prepared if the time
4 required for its preparation would cause the Commission to be unable
5 to adopt rules in accordance with time deadlines established by the
6 Congress of the United States or by the United States Environmental
7 Protection Agency. Limits and conditions to protect air quality
8 standards that are included in permits issued under this Article are not
9 subject to the requirements of this subsection.

10 (6) In any judicial review of the rule that is the subject of the study, the
11 entry into the record before the court of the finding as to such impacts
12 by the Commission creates a rebuttable presumption that the
13 environmental, public health, safety and welfare benefits from the
14 proposed air emission standards and limitations and management
15 practices exceed their social and economic costs. To overcome the
16 presumption, persons challenging the rule must present clear and
17 convincing evidence that the benefits of the agency rule do not justify
18 the costs.

19 (7) This subsection does not require that an assessment be prepared for
20 any rule for which there is no comparable federal standard.

21 (g) ~~Notwithstanding the provisions of subdivision (a)(7) and subsection (f) of this~~
22 ~~section, the Environmental Management~~ The Commission may adopt rules applicable to
23 any facility which that is sited or operated pursuant to Chapter 130B of the General
24 Statutes which that incorporate standards and restrictions which and limitations and
25 management practices that exceed and are more comprehensive than comparable federal
26 regulations. The procedures set out in subsection (f) of this section do not apply to the
27 adoption of such rules."

28 Sec. 3. G.S. 130A-295.02(d) reads as rewritten:

29 "(d) Resident inspectors assigned to a commercial hazardous waste facility shall
30 have unrestricted access to all operational areas of such facility at all times. For the
31 protection of resident inspectors and the public, the provisions of ~~G.S. 143-215.107(a)(7)~~
32 ~~and~~ G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to
33 which a resident inspector is assigned."

34 Sec. 4. This act shall not be construed to affect the validity of any rule in
35 force on the date this act becomes effective or to proposed rules for which a notice of
36 rule making is published in the North Carolina Register before the date this act becomes
37 effective.

38 Sec. 5. This act shall not be construed to obligate the General Assembly to
39 make any appropriation to implement the provisions of this act. Each agency to which
40 this act applies shall implement the provisions of this act from funds otherwise
41 appropriated or available to that agency.

42 Sec. 6. This act is effective upon ratification.