

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 403  
SENATE BILL 386

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 EVALUATION OF THE IMPACT OF SUCH RULES BE PREPARED BEFORE SUCH RULES ARE ADOPTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213(23) reads as rewritten:

"(23) The term '~~effluent standards' or 'effluent limitations'~~ standards or 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."

Sec. 2. G.S. 143-215 reads as rewritten:

**"§ 143-215. Effluent standards ~~and or~~ limitations.**

(a) The Commission is authorized and directed to develop, adopt, modify and revoke effluent standards ~~and or~~ limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations ~~or and~~ 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 or~~ limitations developed and adopted by the Commission shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters. The management practices developed and adopted by the Commission shall prescribe practices necessary to be employed in order to prevent or reduce contribution of pollutants to the State's waters.

- (c) (1) In adopting effluent standards ~~and or~~ limitations and management practices the Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control Program. ~~It is the intent of the General Assembly that the Act. The~~ effluent standards ~~and or~~ limitations and management practices adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards ~~and or~~ limitations and management practices. ~~practices unless the Commission first considers, among other things, an evaluation, prepared by the Department in accordance with this subsection, of the impact of the proposed effluent standards or limitations and management practices and finds that the environmental, public health, safety, and welfare benefits of such proposed effluent standards or limitations and management practices justify their costs.~~
- (2) The Department shall prepare and submit into the record of the rule-making hearing an evaluation of the proposed standards or limitations and management practices. The study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture to comply with the proposed standards or limitations and management practices and an examination of the environmental, public health, safety, and welfare benefits from the proposed effluent standards or limitations and management practices. The evaluation shall present relevant data, assumptions, analysis, and calculations in sufficient detail to allow the agency and any reviewing person or entity to understand the information presented. The evaluation shall be as extensive as is practicable, in the judgment of the agency, taking into account the time and resources available to the agency and the other duties which the agency is required to carry out.
- (3) In preparing the evaluation required by this subsection, the Department may call upon any agency of the State government, the Agricultural Extension Service, the institutions of The University of North Carolina, and private contractors regarding the acquisition and analysis of data necessary to prepare the evaluation required by this subsection.
- (4) The evaluation required by this subsection shall take into account the uncertainties associated with the estimation of benefits and costs and 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 evaluation 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 or 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 evaluation be prepared for any rule for which there is no comparable federal effluent limitation or 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 or 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. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Commission shall have the authority to assess fines and penalties not to exceed five thousand dollars (\$5,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection."

Sec. 3. 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.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State

as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas; ~~provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.~~ areas.

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

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

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

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

- (1) Emission control standards adopted by the Commission pursuant to this Article or Article 21, or by any other State or local regulatory

~~body under the General Statutes of North Carolina, shall be no more restrictive and no more stringent than required necessary to comply with federal ambient air quality standards or other applicable federal requirements, if any, adopted in final or proposed regulations by the United States Environmental Protection Agency under or pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air quality rules, procedures, plans, practices, air quality standards or emission control standards shall be adopted by the Commission with respect to matters on which the United States Environmental Protection Agency has not proposed or adopted final regulations requirements unless the Commission first considers, among other things, an assessment evaluation of the economic impact of the proposed standards. emission control standards and finds that the benefits of such proposed emission control standards justify their costs.~~

- (2) The Department shall prepare and submit into the record of the rule-making hearing an economic impact study evaluation, prepared by the Department in accordance with this subsection, of such proposed standards. Such The study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture necessary to comply with the proposed standards and an examination of the economic and social benefits of such compliance. their environmental, public health, safety, and welfare benefits. The evaluation shall present relevant data, assumptions, analysis, and calculations in sufficient detail to allow the agency and any reviewing person or entity to understand the information presented. The evaluation shall be as extensive as is practicable, in the judgment of the agency, taking into account the time and resources available to the agency and the other duties which the agency is required to carry out.
- (3) In preparing the evaluation required by this subsection, the Department may call upon any agency of the State government, the Agricultural Extension Service, the institutions of The University of North Carolina, and private contractors regarding the acquisition and analysis of data necessary to prepare the evaluation required by this subsection.
- (4) The evaluation required by this subsection shall take into account the uncertainties associated with the estimation of benefits and costs and 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 evaluation 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. Nothing in this subsection shall be construed to require that an evaluation be prepared if the time required for its preparation would cause the Commission to be unable to adopt rules in accordance with time deadlines established by the Congress of the United States or by the United States Environmental Protection Agency. Limits and conditions to protect air 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 emission control standards 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 evaluation be prepared for any rule for which there is no comparable federal emission control standard.

~~(g) Notwithstanding the provisions of subdivision (a)(7) and subsection (f) 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 that exceed and are more comprehensive than comparable federal regulations. The procedures set out in subsection (f) of this section do not apply to the adoption of such rules."

Sec. 4. G.S. 130A-295.02(d) reads as rewritten:

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

Sec. 5. This act shall not be construed to affect the validity of any rule in force on the date this act becomes effective or to proposed rules for which a notice of rule making is published in the North Carolina Register before the date this act becomes effective.

Sec. 6. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Sec. 7. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives