

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 698
SENATE BILL 681

AN ACT TO AMEND PART 1, ARTICLE 21, CHAPTER 143, NORTH CAROLINA
GENERAL STATUTES RELATING TO WATER AND AIR POLLUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-214(a) is amended by adding a paragraph immediately following subdivision (9), as follows:

"No person who receives, or during the previous two years has received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit shall be eligible to serve as a member of the Board. The Governor, by executive order, may promulgate criteria for determining the eligibility for persons under this provision, and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of federal law."

Sec. 2. Part 1, Article 21, of Chapter 143 is hereby amended by adding a new section reading as follows:

"§ 143-214.2. **Prohibited discharges.** — (a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited.

(c) The discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited, except where such discharges are permitted pursuant to regulation duly adopted by the Board."

Sec. 3. G.S. 143-215.2 is hereby amended to read as follows:

"§ 143-215.2. **Special Orders.** — (a) Issuance. The Board is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Board deems necessary and feasible in order to alleviate or eliminate such pollution. The Board is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Board issued pursuant to hearing.

(b) Procedure. No special order shall be issued by the Board (unless issued upon consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board. Every special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Board shall be final and binding.

(d) Effect of compliance. Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Board or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Board or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

- (1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Sec. 4. Subdivision (3) of G.S. 143-215.3(a) is amended to read as follows:

"(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article;"

Sec. 5. Subdivision (4) of G.S. 143-215.3(a) is hereby amended by rewriting the last sentence thereof to read as follows:

"Any employee of the Department of Natural and Economic Resources to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board."

Sec. 6. Subdivision (5) of G.S. 143-215.3(a) is amended to read as follows:

"(5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Board has occurred, or, in the discretion of the Board, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board;"

Sec. 7. G.S. 143-215.3 (a) is amended by rewriting subdivisions (8), (9), and (10), to read as follows:

"(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.73 for the construction or operation of any new or additional disposal system or systems or air cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Board, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Board may make reasonable distinctions among the various sources of water and air

pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Board shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Board that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Board believes to have a direct interest therein.

Any person who is adversely affected by the order of the Board may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

- (9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Board pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or G.S. 143-215.73, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.74, the Board may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefore. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Board may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Board may institute a civil action in the superior court of the county in which the violation occurred or, in the Board's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.
- (10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Board implementing the provisions of this Article to be certified by the Board in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility."

Sec. 8. G.S. 143-215.3(a)(12) is amended by renumbering subdivision (12) as subdivision (11).

Sec. 9. G.S. 143-215.3 is amended by adding thereto a new subsection (e), reading as follows:

"(e) Variances. Any person subject to the provisions of G.S. 143-215.1 or G.S. 143-215.73 may apply to the Board for a variance from rules, regulations, standards or

limitations established pursuant to G.S. 143-214.1, G.S. 143-215, or G.S. 143-215.72. The Board may grant such variance, but only after public hearing on due notice, if it finds that:

- a. The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and
- b. Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology economically achievable at the time of application for such variance, or would produce serious hardship without equal or greater benefits to the public."

Sec. 10. G.S. 143-215.4 is hereby amended by adding "hearing officer" to the tag line and by adding a new subsection (e) as follows:

"(e) One or more qualified employees of the Department of Natural and Economic Resources may be designated as hearing officers to conduct any hearings provided for in this Article in accordance with the procedures established for such hearings by law and the official rules and regulations of the Board. Unless otherwise provided in the Board's regulations, an order or decision of a hearing officer shall be final and to the same effect as an order or decision of the Board. Appeal from a final order or decision of a hearing officer shall be as provided in G.S. 143-215.5."

Sec. 11. G.S. 143-215.5 is hereby amended to read as follows:

"§ **143-215.5. Judicial review.** — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.4(d) shall be entitled to a review of the order or decision by the full Board upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Board shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Board, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Board shall constitute the full Board on review.

(b) Any person against whom a final order or decision of the Board is entered pursuant to hearing conducted by the Board under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Board to whom such authority has been duly delegated, may appeal from the order or decision of the Board within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court of Wake County or of the county where the order or decision is effective. Upon such appeal the Board shall send a certified transcript of all testimony and exhibits introduced before the Board, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Board to the Court of Appeals.

- (1) Upon appeal filed by any party, the Board shall forthwith furnish each party to the proceeding with a copy of a certified transcript and exhibits filed with the Board. A reasonable charge shall be paid the Board for said copies.

- (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript."

Sec. 12. G.S. 143-215.6 is hereby amended to read as follows:

"§ 143-215.6. Enforcement procedures. — (a) Civil penalties.

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Board against any person who:
 - a. Violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S. 143-215.
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, 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. 143-215.2.
 - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article.
 - e. Refuses access to the Board or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article.
 - f. Violates any duly adopted regulation of the Board implementing the provisions of this Article.
 - (2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Board may assess a penalty not to exceed five thousand dollars (\$5,000) per day for so long as the violation continues.
 - (3) The Board 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 of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Board may specify, the Board may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Board, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Board's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.
- (b) Criminal penalties.
- (1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S. 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Board implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation, 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 or regulations of the Board implementing this Article, 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 or regulations of the Board implementing this Article, 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 of Natural and Economic Resources has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Board implementing the provisions of this Article, the Department of Natural and Economic Resources may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural and Economic Resources 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 the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Board 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."

Sec. 13. G.S. 143-215.8 is hereby amended to read as follows:

"§ 143-215.8. **Planning.** — (a) Policy, purpose and intent. The Board and Department of Natural and Economic Resources shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, 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 insure the beneficial use of the water resources of the State.

(b) Goals. The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through development by the Board of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and regional planning. The planning process may be conducted on a statewide or regional basis, as the Board shall determine appropriate. If the Board elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other manner that the extent and limits of each region shall be easily ascertainable. The Board shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local planning organizations. The Board shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Board shall consult with, advise, and assist any organization so designated in the preparation of its plans and shall submit to the Governor the Board's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate planning regions. The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.

(g) The Board shall establish procedures for the development, revision and modification of plans under this section through adoption of appropriate rules and regulations. The rules and regulations of the Board shall establish procedures for public hearing on all plans prior to their adoption, modification or revision, and upon adoption, they shall become the official water quality management plans of the State."

Sec. 14. G.S. 143-215.13 is amended by adding thereto a new subsection (d), reading as follows:

"(d) The Board may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Board determines, pursuant to hearing, that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Board may issue an order:

- (1) Prohibiting any person withdrawing waters in excess of one hundred thousand (100,000) gallons per day from increasing the amount of the withdrawal above such limit as may be established in the order.
- (2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the order; but such prohibition shall not extend to any new well or facility having a capacity of less than ten thousand (10,000) gallons per day.
- (3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the order.

- (4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the order.
- (5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the order.

The determination of the Board shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Board that the generalized condition of water depletion or water pollution within the area has ceased.

Notice setting forth the time, place and purpose of the hearing and a description by geographical or political boundaries of the area affected shall be given:

- (1) By publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing;
- (2) By mailing copies of the notice by registered or certified mail at least 20 days in advance of hearing to the governing body of every county, city, town, and affected political subdivision lying in whole or in part within the area and to every affected or interested State and federal agency; and
- (3) By posting a copy of the notice at the courthouse in every county lying, in whole or in part, within the area.

The Board is also authorized, in the exercise of its discretion, to mail copies of notice by first class mail to any person who it believes will or may be interested in or affected by the hearing.

Upon issuance of any order by the Board pursuant to this subsection, a certified copy of such order shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the order shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the order shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such order after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

Any person who is adversely affected by an order of the Board issued pursuant to this subsection may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal."

Sec. 15. G.S. 143-215.15(g) is amended by striking from the fifth and sixth sentences thereof the words "Supreme Court" and substituting therefor the words "Court of Appeals".

Sec. 16. G.S. 143-215.17(b) is amended by rewriting it to read as follows:

"(b) Civil actions. In addition, upon violation of any of the provisions of this Part, or the regulations of the Board hereunder, the Secretary of the Department may, either before or after the the institution of proceedings for the collection of the penalty imposed by this Part for such violation, institute, either in the county in which the violation occurred, or, at the Secretary's discretion, in the county wherein the violator resides or has his or its principal place of business, a civil action in the superior court in the name of the State upon relation of the Secretary of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the

action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same."

Sec. 17. G.S. 143-215.3(a) is amended by adding thereto a new subdivision, reading as follows:

"To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification, extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Board may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available."

Sec. 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 19. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of May, 1973.