

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 821
SENATE BILL 682

AN ACT TO AMEND PART 1, AND ADD A NEW PART 8 TO ARTICLE 21, CHAPTER 143, NORTH CAROLINA GENERAL STATUTES BY ADDING DEFINITIONS, PROVIDING FOR THE ESTABLISHMENT OF EFFLUENT STANDARDS AND LIMITATIONS AND THE GRANTING OF VARIANCES AND CERTAIN OTHER AMENDMENTS TO THE WATER AND AIR POLLUTION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213(18) is hereby amended by adding thereto a new subdivision as follows:

"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."

Sec. 2. G.S. 143-213 is amended by rewriting subdivisions (10), (13), (15), (17), and (19) and adding a new subdivision (26) to read as follows:

"(10) The term 'disposal system' means a system for disposing of waste, and including sewer systems and treatment works."

"(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."

"(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."

"(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."

"(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."

Sec. 3. G.S. 143-213 is hereby amended by renumbering existing subdivisions (12)-(14) as (13)-(15), by renumbering existing subdivisions (15)-(21) as (19)-(25), and by inserting four new subdivisions, to be numbered subdivisions (12), (16), (17), and (18), respectively, to read as follows:

"(12) 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."

"(16) 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."

"(17) 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."

"(18) The term 'pretreatment standards' means effluent standards or limitations applicable to waste discharged from a pretreatment facility."

Sec. 4. G.S. 143-215 is rewritten to read as follows:

"§ 143-215. Effluent standards and limitations. — (a) The Board is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations may provide, without limitation, standards or limitations for any point source or sources; standards, limitations 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.

(b) The effluent standards and limitations developed and adopted by the Board shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and 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 concomitant with the public interest therein and the best use thereof; to preserve and protect the public health, safety and welfare; to promote propagation of and protect fish, shellfish and wildlife; to prevent damage to private and public property; and to preserve and enhance esthetic values."

Sec. 5. G.S. 143-215.1 is hereby amended by amending the title and rewriting the section to read as follows:

"§ 143-215.1. Control of sources of water pollution; permits required. — (a) After the effective date of water quality standards and classifications established pursuant to G.S. 143-214.1 or effluent standards or limitations established pursuant to G.S. 143-215, 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 Board 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 an extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water, or to an extent beyond such minimum limits as the Board may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;
- (5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Board under the provisions of this Article;
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

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

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the State Board of Health determines and advises the Board that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Board has referred the complete plans and specifications to the State Board of Health and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Board denies a permit, it shall state in writing the reason for such denial and shall also state the Board's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Board's power as to permits. The Board shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing, so far as reasonably possible, any pollution or any increased pollution of the waters of the State from any additional or enlarged sources.

The Board shall have the power:

- (1) To grant a permit with such conditions attached as the Board believes necessary to achieve the purposes of this section;

- (2) To grant any temporary permit for such period of time as the Board shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Board finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Applications for permits and renewals for pretreatment facilities and for other facilities discharging to the surface waters.

- (1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Board may prescribe the form of such applications. All applications shall be filed with the Board at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Board shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Board may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Board deems necessary to the proper evaluation of the application.
- (2) The Board, pursuant to appropriate rules of procedure adopted by it, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Board concurs in the proposed determination, it shall cause notice of the application and of the proposed determination, along with any other data that the Board may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Board, through its official rules, shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the State lies and by publication of the notice one time in a newspaper having general circulation within the county.

- (3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Board within 30 days following date of the notice of application. The Board shall consider all such requests for hearing, and if the Board determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of application was sent and to any other person requesting

notice. At least 30 days prior to the date of hearing, the Board shall also cause a copy of the notice thereof to be posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal system lies, and shall cause the notice to be published at least one time in a newspaper having general circulation in such county. The Board, through its official rules, shall prescribe the form and content of the notices.

The Board shall adopt appropriate rules and regulations governing the procedures to be followed in such hearings. If the hearing is not conducted by the Board, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Board for its consideration prior to final action granting or denying the permit.

- (4) Forty-five days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Board shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Board and all decisions denying application for permit or renewal shall be in writing.
- (5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(d) Applications and permits for sewer systems, sewer system extensions, and for wastewater treatment facilities not discharging to the surface waters of the State. All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Board shall act on all applications for permits as rapidly as possible, but it shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Board to take action on an application for a permit or renewal within 90 days after all data, plans, specifications and other required information have been furnished by the applicant, shall be treated as approval of such application. The Board shall adopt such rules and regulations as it deems necessary, establishing the form of and procedures for processing applications, permits and renewals. Such regulations may require the submission of plans and specifications and other information as the Board deems necessary to the proper evaluation of an application. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Board.

(e) Hearings and appeals. Any person whose application for a permit or renewal is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Board upon making demand therefor within 30 days following the giving of notice by the Board as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Board on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board."

Sec. 6. Article 21, Chapter 143 of the North Carolina General Statutes is amended by adding thereto a new Part 8, reading as follows:

"Part 8. Air Pollution Control

"§ 143-215.70. **Declaration of policy, definitions.** — The declaration of public policy set forth in G.S. 143-211 and the definitions set forth in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Part.

"§ 143-215.71. **Administration.** — The air quality program of the State of North Carolina shall be administered by the Department of Natural and Economic Resources under the rules, regulations and policies of the North Carolina Board of Water and Air Resources created pursuant to G.S. 143-214. The Board shall review and have general oversight and supervision over the creation and administration of local air pollution control programs authorized by this Part. Public hearings on the adoption by the Board of air quality standards, emission control standards, and classifications for air contaminant sources as well as any proposed revisions in such standards and classifications shall be conducted in accordance with the procedure set forth in subsections(e)(1), (e)(2) and (e)(3) of G.S. 143-214.1.

"§ 143-215.72. **Air quality standards and classifications.** — (a) The Board 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:

- (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 Board deems proper in order to promote the policies and purposes of this Article most effectively.
- (4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Board may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Board requires reporting shall make reports containing such information as may be required by the Board 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 Board 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 Board.
- (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.

(b) Criteria for standards. In developing air quality and emission control standards, the Board 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.

(c) Proposed adoption of standards and classifications. Prior to the adoption by the Board of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Board shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of G.S. 143-214.1.

(d) Final adoption of air quality standards, emission control standards and classifications for air contaminant sources. Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Board with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Board shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforesaid standards and classifications, the Board shall likewise publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.73 and G.S. 143-215.74 to persons within the State as a whole or within any designated area of the State.

(e) Board's power to modify or revoke. The Board is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article.

"§ 143-215.73. Control of sources of air pollution; permits required. — (a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.72, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Establish or operate any air contaminant source;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
- (4) Enter into a contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Board shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air of the State from any additional or enlarged sources.

The Board shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Board believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Board shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and
- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing.

The Board shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Board to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Board upon making demand therefor within 30 days following the giving of notice by the Board as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Board on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Board.

"§ 143-215.74. Control of Complex Sources. — (a) The Board shall develop and adopt regulations establishing criteria for controlling the effects of complex sources on air quality. The regulations shall set forth such basic minimum criteria or standards under which the Board shall approve or disapprove any such construction or modification. The regulations shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Board shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Board shall have authority to disapprove such construction or modification or to approve such construction or modification under such conditions as the Board shall deem necessary or appropriate.

(c) In adopting the regulations required by this section and in applying such regulations to any complex source, the Board may conduct such public hearings as it, in its sole discretion, shall deem appropriate, after such notice and pursuant to such procedures as the Board shall establish in its rules of procedure.

"§ 143-215.75. Special orders. — (a) Issuance. The Board is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.72, 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 air 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 air, 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 the consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.76 and in any applicable rules of procedure of the

Board. Any 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 an air-cleaning device for the purpose of alleviating or eliminating air pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.73, 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 air 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 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 air-cleaning devices result in the elimination or alleviation of air 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.

"§ 143-215.76. General powers of Board; auxiliary powers. — In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Board shall have the power:

(a) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.

(b) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article, rules and regulations adopted pursuant thereto, or any other provision of law.

(c) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible.

"§ 143-215.77. Local air pollution control programs.— (a) The Board 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 any applicable standards and rules and regulations adopted pursuant thereto. The Board 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 the standards and rules and regulations issued pursuant thereto; provided, however, the Board 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, rules, or regulations promulgated by the Board;

- (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 Board as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Board.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Board of Water and Air Resources, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

- a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
 - b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
 - c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
 - d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Board of Water and Air Resources; and administration of such rules, regulations and standards in accordance with provisions of this section.
 - e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
 - f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.
- (2) Subject to the approval of the Board of Water and Air Resources as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:
- a. Establishing a program under the administration of the duly elected governing body of the county or municipality;
 - b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term

- 'governing body' is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
- c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.
- (3) If the Board finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Board may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Board of Water and Air Resources, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Board of Water and Air Resources for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term 'governing body' is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.
- (4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and

emission control standards, a copy of which must be filed with the Board of Water and Air Resources and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body shall constitute a misdemeanor, punishable as provided in G.S. 143-215.79(b).

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the 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 Article for any violation of same.

(3) In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(4) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and 'administrative agency' or 'agency' as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(e) (1) If the Board has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Board shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing the Board determines that an existing local air pollution control program or one which has been certified by the Board is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

- (3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Board shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.
- (4) If the Board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
- (5) Any municipality or county in which the Board administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Board, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Board.
- (6) Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Board as an approved local air pollution control program. Any certification required from the Board shall be deemed granted unless the Board takes specific action to the contrary.
- (7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Board. The Board shall approve any such application if it is consistent with this Article and other applicable requirements of law.
- (8) Notwithstanding any other provision of this section, if the Board determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Board, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.

"§ 143-215.78. General provisions as to procedure; seal; hearing officer, appeals. — All hearings provided for in this Part to be conducted by the Board shall be in accordance with the provisions of G.S. 143-215.4. Appeals from any final order or decision of the Board shall be pursuant to the provisions of G.S. 143-215.5.

"§ 143-215.79. 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. 143-215.72;
 - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.73 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. 143-215.75;
 - 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 of its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or
 - 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, or, if authorized by the Board, the Department of Natural and Economic Resources 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 Wake County 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. 143-21.72; any term, condition, or requirement of a permit issued pursuant to G.S.143-215.73 or of a special order or other appropriate document issued pursuant to G.S. 143-215.75 or any regulation of the Board implementing any of the said section, 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 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 Part or any regulations adopted by the Board implementing the provisions of this Part, the Department of Natural and Economic Resources, 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 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 or the regulation 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 Part."

Sec. 7. 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. 8. This act shall become effective September 1, 1973.

In the General Assembly read three times and ratified, this the 24th day of May, 1973.