

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 585
HOUSE BILL 797

AN ACT TO AMEND THE WATER USE ACT OF 1967, SO AS TO UPDATE ITS NOTICE, HEARING AND APPEAL PROCEDURES, TO ELIMINATE OUTMODED AND REDUNDANT PROVISIONS, AND FOR RELATED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The third and fourth sentences of G.S. 143-215.13(c)(2) are hereby rewritten to read as follows: "This report shall indicate whether the water use problems of the area involve surface waters, ground waters or both and shall identify the department's suggested boundaries for any capacity use area that may be proposed. It shall present such alternatives as the department deems appropriate, including actions by any agency or person which might preclude the need for additional regulation at that time, and measures which might be employed limited to surface water or ground water". G.S. 143-215.13(c)(2) is further amended at line 5 by deleting the words "the Stream Sanitation Law" and by inserting in lieu thereof the words "Part 1 of this Article".

Sec. 2. G.S. 143-215.13(c)(3) is hereby amended by deleting the words "an order" in lines 4 and 5 and by inserting in lieu thereof the words "a rule", and by inserting at line 8 after the word "action" and before the period the words "in accordance with G.S. 150A-12". G.S. 143-215.13(c)(7) is hereby amended by deleting the word "order" in line 12 and by inserting in lieu thereof the word "rule".

Sec. 3. G.S. 143-215.13(c) is further amended by deleting therefrom in their entirety paragraphs (4), (5) and (6) and by renumbering paragraph (7) as paragraph (4).

Sec. 4. G.S. 143-215.13(d) is hereby amended in the following respects:

(a) By deleting the word "order" wherever it appears therein and by inserting in lieu thereof the word "rule", and by changing the modifying article from "an" to "a" where appropriate.

(b) By deleting the citation "G.S. 143-215.4" in line 2 thereof and by inserting in lieu thereof the words "this subsection".

(c) By deleting at lines 6 and 7 thereof the words and punctuation ", pursuant to hearing,".

(d) By rewriting the first sentence of the second paragraph thereof (which begins with the words "The determination") to read as follows: "The determination of the Environmental Management Commission shall be based upon the record of the public hearing and other information considered by the commission in the rule-making proceeding."

(e) By rewriting the third paragraph thereof (which begins with the word "Notice" and ends with the word "hearing") to read as follows: "Notice of the hearing, including a description by geographical or political boundaries of the area affected, shall be given as provided by G.S. 150A-12."

(f) By rewriting the last paragraph of said subsection to read as follows: "Any person who is adversely affected by a rule of the Environmental Management Commission issued pursuant to this subsection shall be entitled to an administrative hearing before the Environmental Management Commission to contest the rule or the application of the rule to such person. Any such hearing shall be held in accordance with the provisions of Article 3 of

Chapter 150A of the General Statutes. Any person who is aggrieved by a final decision of the Environmental Management Commission in a contested case shall be entitled to judicial review of such decision in accordance with Article 4 of Chapter 150A of the General Statutes. The Environmental Management Commission in its sole discretion may stay the effectiveness of the rule, in whole or in part, pending an administrative hearing and pending judicial review thereof. In the absence of a stay from the Environmental Management Commission the rule shall be effective pending any administrative hearing and any judicial review thereof."

Sec. 5. G.S. 143-215.14(b) is hereby amended by deleting the words "requirements of subdivisions (4)-(6) of G.S. 143-215.13(c)" and by inserting in lieu thereof the words "provisions of G.S. 150A-12."

Sec. 6. The last sentence of G.S. 143-215.15(c) is hereby rewritten to read as follows: "Any water user aggrieved by the proposed action shall be entitled to a hearing in accordance with G.S. Chapter 150A, Article 3."

Sec. 7. G.S. 143-215.15(d) is hereby rewritten to read as follows:

"(d) The Environmental Management Commission shall give notice of receipt of an application for a permit under this Part to all other holders of permits and applicants for permits under this Part within the same capacity use area, and to all other persons who have requested to be notified of permit applications. Notice of receipt of an application shall be given within 10 days of the receipt of the application by the Environmental Management Commission. The Environmental Management Commission shall also give notice of its proposed action on any permit application under this Part to all permit holders or permit applicants within the same capacity use area at least 18 days prior to the effective date of the proposed action. Notices of receipt of applications for permits and notice of proposed action on permits shall be by first class mail and shall be effective upon depositing the notice, postage prepaid, in the United States Mail. All notices arising out of contested cases and the service and filing of documents in conjunction with contested case hearings shall follow the procedures of Article 4 of Chapter 150A except as otherwise provided in this Part."

Sec. 8. G.S. 143-215.15(e) is hereby repealed, and subsequent subsections are hereby renumbered accordingly.

Sec. 9. G.S. 143-215.15(f) is hereby rewritten to read as follows:

"(f) (1) The Department of Natural Resources and Community Development shall have the authority to adopt a seal which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the secretary of the department under his hand and the seal of the Department of Natural Resources and Community Development and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(2) The burden of proof at any hearing under this Part shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.

(3) The provisions of General Statutes Chapter 150A, Article 3 shall be applicable in connection with hearings pursuant to G.S. 143-215.15 and G.S. 143-215.16."

Sec. 10. G.S. 143-215.15(g) is hereby rewritten to read as follows:

"(g) Any person against whom any final order or decisions have been made, after a hearing under this section or G.S. 143-215.16, may seek judicial review of the order or decision pursuant to the provisions of General Statutes Chapter 150A, Article 3. The provisions of G.S. 150A-49 and G.S. 150A-50 to the contrary notwithstanding, the matter on appeal shall be determined *de novo* on the transcript and on any new or additional evidence introduced in superior court. The superior court judge hearing the matter shall allow any new or additional evidence on any question of fact as shall be competent under the rules of evidence then applicable to trials in the superior court without a jury."

Sec. 11. G.S. 143-215.17(b)(3) is hereby rewritten to read as follows: "In determining the amount of the penalty the commission shall consider the degree and extent of harm caused by violation, the duration of the violation, the effect on ground or surface water quantity or quality, and whether the violation was intentional or inadvertent."

Sec. 12. G.S. 143-215.19 is rewritten to read as follows:

"§ 143-215.19. Administrative inspection; reports. — (a) When necessary for enforcement of this Part, and when authorized by regulations of the Environmental Management Commission, employees of the commission may inspect any property, public or private, to investigate:

- (1) the condition, withdrawal or use of any waters;
- (2) water sources; or
- (3) the installation or operation of any well or surface water withdrawal or use facility.

(b) The commission's regulations must state appropriate standards for determining when property may be inspected under subsection (a).

(c) Entry to inspect property may be made without the possessor's consent only if the employee seeking to inspect has a valid administrative inspection warrant issued pursuant to G.S. 15-27.2.

(d) The commission may also require the owner or possessor of any property to file written statements or submit reports under oath concerning the installation or operation of any well or surface water withdrawal or use facility.

(e) The commission shall accompany any request or demand for information under this section with a notice that any trade secrets or confidential information concerning business activities is entitled to confidentiality as provided in this subsection. Upon a contention by any person that records, reports or information or any particular part thereof to which the commission has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets or would divulge confidential information concerning business activities, the commission shall consider the material referred to as confidential, except that it may be made available in a separate file marked 'Confidential Business Information' to employees of the department concerned with carrying out the provisions of this Part for that purpose only. The disclosure or use of such information in any administrative or judicial proceeding shall be governed by the rules of evidence, but the affected business shall be notified by the commission at least seven days prior to any such proposed disclosure or use of information, and the commission will not oppose a motion by any affected business to intervene as a party to the judicial or administrative proceeding."

Sec. 13. G.S. 143-215.6(a)(1)e. is amended by deleting the words "any investigations" and by inserting in lieu thereof the words "a lawful inspection".

Sec. 14. This act shall become effective October 1, 1981.

In the General Assembly read three times and ratified, this the 16th day of June, 1981.