

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1995**

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**SENATE BILL 824**

Short Title: State Auth./Fed. Clean Water Act.

(Public)

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Sponsors: Senators Hoyle, East, Davis, Ballantine, Ledbetter, Clark, McDaniel, Hartsell, Speed, Allran, Carpenter, Blackmon, Cochrane, McKoy, Sherron, Forrester, Kerr, Albertson, Martin of Pitt, Warren, Perdue, Sawyer, Conder, Plyler, Jordan, Little, Carrington, Page, and Foxx.

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Referred to: Agriculture/Environment/Natural Resources

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April 25, 1995

**A BILL TO BE ENTITLED**

**AN ACT TO DIRECT THE APPROPRIATE STATE DEPARTMENTS HOW TO EXERCISE THE STATE'S AUTHORITY UNDER THE CLEAN WATER ACT.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282(a)(1) reads as rewritten:

"(a) There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;

- 1           b.     To issue a special order pursuant to G.S. 143-215.2(b) and G.S.  
2           143-215.110 to any person whom the Commission finds  
3           responsible for causing or contributing to any pollution of water  
4           within such watershed or pollution of the air within the area for  
5           which standards have been established;
- 6           c.     To conduct and direct that investigations be conducted pursuant  
7           to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
- 8           d.     To conduct public hearings, institute actions in superior court,  
9           and agree upon or enter into settlements, all pursuant to G.S.  
10          143-215.3;
- 11          e.     To direct the investigation of any killing of fish and wildlife  
12          pursuant to G.S. 143-215.3;
- 13          f.     To consult with any person proposing to construct, install, or  
14          acquire an air or water pollution source pursuant to G.S. 143-  
15          215.3 and G.S. 143-215.111;
- 16          g.     To encourage local government units to handle air pollution  
17          problems and to provide technical and consultative assistance  
18          pursuant to G.S. 143-215.3 and G.S. 143-215.112;
- 19          h.     To review and have general oversight and supervision over local  
20          air pollution control programs pursuant to G.S. 143-215.3 and  
21          G.S. 143-215.112;
- 22          i.     To declare an emergency when it finds a generalized dangerous  
23          condition of water or air pollution pursuant to G.S. 143-215.3;
- 24          j.     To render advice and assistance to local government regarding  
25          floodways pursuant to G.S. 143-215.56;
- 26          k.     To declare and delineate and modify capacity use areas pursuant  
27          to G.S. 143-215.13;
- 28          l.     To grant permits for water use within capacity use areas pursuant  
29          to G.S. 143-215.15;
- 30          m.     To direct that investigations be conducted when necessary to  
31          carry out duties regarding capacity use areas pursuant to G.S.  
32          143-215.19;
- 33          n.     To approve, disapprove and approve subject to conditions all  
34          applications for dam construction pursuant to G.S. 143-215.28; to  
35          require construction progress reports pursuant to G.S. 143-  
36          215.29;
- 37          o.     To halt dam construction pursuant to G.S. 143-215.29;
- 38          p.     To grant final approval of dam construction work pursuant to  
39          G.S. 143-215.30;
- 40          q.     To have jurisdiction and supervision over the maintenance and  
41          operation of dams pursuant to G.S. 143-215.31;
- 42          r.     To direct the inspection of dams pursuant to G.S. 143-215.32;

- 1 s. To modify or revoke any final action previously taken by the  
2 Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107;  
3 and  
4 t. To have jurisdiction and supervision over oil pollution pursuant  
5 to Article 21A of Chapter 143.  
6 u. To administer the State's authority under 33 U.S.C. § 1341 of the  
7 federal Clean Water Act pursuant to G.S. 143-215.3(c1)-(c2)."

8 Sec. 2. G.S. 143-215.3 is amended by adding the following subsections to  
9 read:

10 "(c1) General Exercise of Powers Granted Under Section 401 of the Clean Water  
11 Act. – In determining whether to certify a federally issued permit or activity pursuant to  
12 33 U.S.C. § 1341, the Secretary shall consider only those factors listed in 33 U.S.C. §  
13 1341(a), and shall not condition or deny any request for such a certification based on any  
14 other limitation, standard, or requirement contained in federal or State law. In making  
15 the determination, the Secretary shall not use any guidelines or consider any criteria  
16 employed by the United States Army Corps of Engineers in evaluating permit  
17 applications under 33 U.S.C. § 1344 and applicable federal regulations.

18 (c2) Exercise of Authority Granted Under Federal Law With Regard to Wetlands. –  
19 The Commission shall exercise its authority with regard to wetlands as follows:

- 20 (1) By July 1, 1996, the Commission shall promulgate by rule a wetlands  
21 rating system to determine which wetlands qualify as unique wetlands  
22 pursuant to subdivision (2) of this subsection. Prior to the initial  
23 promulgation of the rules, if the Secretary determines that a proposed  
24 project may impact wetlands, the Secretary shall provide the applicant  
25 with a copy of any rating system to be applied to those wetlands.  
26 (2) Water quality certification shall be granted by the Secretary for any  
27 project that will impact less than one acre of unique wetlands, or that  
28 will impact between one and three acres of unique wetlands, and the  
29 applicant agrees to mitigate any resulting loss of wetlands from the  
30 proposed project on a one-to-one ratio, acres lost to acres mitigated. For  
31 purposes of this section, unique wetlands are those determined by the  
32 Commission pursuant to G.S. 143-214.1 to be coastal salt water  
33 wetlands or wetlands of exceptional State or national ecological  
34 significance that require special protection to maintain existing uses.  
35 (3) Water quality certification shall be granted by the Secretary for any  
36 project that will impact less than three acres of any wetlands that do not  
37 constitute unique wetlands.  
38 (4) Water quality certification shall be granted for any project that will  
39 impact wetlands or other waters of the State only through the discharge  
40 of fill material into wetlands, unless: the Secretary finds that the  
41 discharge of the fill material will result in 'significant degradation' as  
42 defined under applicable federal regulations of any existing and  
43 designated uses of any waters of the State (including the impacted

1                    freshwater wetland body), and upon notice of the finding by the  
2                    Director, the applicant indicates an unwillingness to mitigate the loss of  
3                    wetlands at a one-to-one ratio, acres lost to acres mitigated. Any  
4                    mitigation required by the United States Army Corps of Engineers  
5                    under 33 U.S.C. § 1344 may be credited to the applicant for purposes of  
6                    meeting this mitigation option.  
7                    (5) No water quality certification shall be required for any dredge or fill  
8                    activities conducted in any wetlands that are inadvertently created  
9                    through any construction, mining, or other commercial activities."  
10                  Sec. 3. This act is effective upon ratification.