SENATE BILL 651*

Short Title: Polluter Pays. (Public)

Sponsors: Senators Garrett, Marcus, and deViere (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 4, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE PERSONS CAUSING OR CONTRIBUTING TO CONTAMINATION RESPONSIBLE FOR COSTS OF CLEANUP AND PROVISION OF ALTERNATIVE WATER SUPPLIES TO PERSONS WITH WATER SUPPLIES AFFECTED BY SUCH CONTAMINATION AND TO PROHIBIT AN ELECTRIC PUBLIC UTILITY FROM RECOVERING COSTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION ASH AND UNLAWFUL DISCHARGES FROM COAL ASH PONDS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-215.3(a) reads as rewritten:

"§ 143-215.3. General powers of Commission and Department; auxiliary powers.
(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

... (9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission 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 Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission'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.

... (12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an
emergency requiring immediate action to protect the public health and safety
or to protect fish and wildlife, the Secretary of the Department with the
concurrence of the Governor, shall order persons causing or contributing to
the water or air pollution in question to reduce or discontinue immediately the
emission of air contaminants or the discharge of wastes. Immediately after the
issuance of such order, the chairman of the Commission shall fix a place and
time for a hearing before the Commission to be held within 24 hours after
issuance of such order, and within 24 hours after the commencement of such
hearing, and without adjournment thereof, the Commission shall either affirm,
modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the
type referred to above, if the Secretary finds that the emissions from one or
more air contaminant sources or the discharge of wastes from one or more
sources of water pollution is causing imminent danger to human health and
safety or to fish and wildlife, he may with the concurrence of the Governor
order the person or persons responsible for the operation or operations in
question to immediately reduce or discontinue the emissions of air
contaminants or the discharge of wastes or to take such other measures as are,
in his judgment, necessary, without regard to any other provisions of this
Article or Article 21B of this Chapter. In such event, the requirements for
hearing and affirmance, modification or setting aside of such orders set forth
in the preceding paragraph of this subdivision shall apply.

(12a) If an investigation conducted pursuant to this Article or Article 21B of this
Chapter reveals a condition of water or air pollution which is causing danger
to the health or safety of the public, the Secretary of the Department may order
persons causing or contributing to the water or air pollution in question to
immediately reduce or discontinue the emissions of air contaminants or the
discharge of wastes or to take such other measures as are, in the Secretary's
judgment, necessary, without regard to any other provisions of this Article or
Article 21B of this Chapter. The order may direct the person to take, or refrain
from taking, an action, or to achieve a result, within a period of time specified
by the order, as the Secretary deems necessary and feasible in order to alleviate
or eliminate the pollution. In addition, the order may require the person to
provide alternate water supplies to persons with water supplies damaged by
the water or air pollution in question, or require the person to establish a
permanent replacement water supply to persons with water supplies damaged
by the water or air pollution in question, as appropriate in the judgment of the
Secretary. In the case of permanent replacement water supply, the water
supply shall be established by connection to a public water supply, except that
an affected household may elect to receive a whole house filtration system in
lieu of a connection to a public water supply, in which case the person
responsible shall install a filtration system. For households for which filtration
systems are installed, the person responsible shall be liable for any periodic
required maintenance of the filtration system. The Secretary shall assess the
person causing or contributing to the water or air pollution in question 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 water or
air pollution for which the person is responsible. If the person responsible for
the water or air pollution in question refuses or fails within a reasonable time
to pay any sums assessed, the Secretary may institute a civil action in the
superior court of the county in which the water or air pollution occurred or, in
the Secretary's discretion, in the superior court of the county in which such
person resides or has its principal place of business, to recover such sums.

"§ 143-215.2. Special orders.
(a) Issuance. – The Commission may, after the effective date of classifications, standards
and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed
management requirement adopted pursuant to G.S. 143-214.5, issue, and from time to time
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. The order or instrument may direct the person to take,
or refrain from taking an action, or to achieve a result, within a period of time specified by the
special order, as the Commission deems necessary and feasible in order to alleviate or eliminate
the pollution, including a requirement that the responsible person provide temporary
alternate or permanent replacement water supplies to persons with water supplies damaged by
the water pollution in question. The Commission 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, subject to the provisions of subsection (a1) of this
section regarding proposed orders, and the consent order, when entered into by the Commission
after public review, shall have the same force and effect as a special order of the Commission
issued pursuant to hearing."

"§ 62-133.13. Recovery of costs related to the management of coal combustion residuals
and unlawful discharges from coal combustion residuals surface impoundments
to the surface waters of the State.

The Commission shall not allow an electric public utility to recover from the retail electric
customers of the State costs resulting from an unlawful discharge to the surface waters of the
State from a coal combustion residuals surface impoundment, unless the Commission determines
the discharge was due to an event of force majeure. For the purposes of this section, "coal
combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201.
For the purposes of this section, "unlawful discharge" means a discharge that results in a violation
of State or federal surface water quality standards.

(a) For the purposes of this section, "coal combustion residuals surface impoundment"
has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "costs related
to unlawful discharges to the surface waters of the State" include any corrective actions required
of the electric public utility under State or federal law.

(b) The Commission shall not allow an electric public utility to recover from the retail
electric customers of the State any of the following costs:

(1) Costs incurred on or after January 1, 2014, that are related to the management
of coal combustion residuals disposed of in coal combustion residuals surface
impoundments, including costs associated with complying with the provisions
of Part 2I of Article 9 of Chapter 130A of the General Statutes.

(2) Costs incurred on or after January 1, 2014, that are related to an unlawful
discharge to the surface waters of the State from a coal combustion residuals
surface impoundment, unless the Commission determines the discharge was
due to an event of force majeure."

SECTION 3. There is appropriated from the General Fund to the Department of
Environmental Quality the sum of seventy-five thousand dollars ($75,000) in recurring funds to
implement the requirements of this act.

SECTION 4. The provisions of G.S. 143C-5-2 do not apply to this act.

SECTION 5. This act is effective when it becomes law.