

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

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HOUSE BILL 1124

Short Title: Air Quality Permits/Special Orders.

(Public)

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Sponsors: Representative B. Ethridge.

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Referred to: Basic Resources.

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April 10, 1989

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT PUBLIC NOTICE BE GIVEN OF AN APPLICATION  
2 FOR AN AIR QUALITY PERMIT AND OF DRAFT SPECIAL ORDERS BY  
3 CONSENT AND TO PROVIDE FOR A PUBLIC MEETING CONCERNING THE  
4 ISSUANCE OF SUCH A PERMIT AND DRAFT ORDERS IF THE  
5 ENVIRONMENTAL MANAGEMENT COMMISSION DETERMINES THAT  
6 THERE IS A SIGNIFICANT INTEREST IN HOLDING SUCH A MEETING.  
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 143-215.108(b) reads as rewritten:

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

14 The Commission shall have the power:

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

- 1 (5) To request such information from an applicant and to conduct such  
2 inquiry or investigation as it may deem necessary and to require the  
3 submission of plans and specifications prior to acting on any  
4 application for a permit;
- 5 (5a) To require that an applicant satisfy the Commission that the applicant,  
6 or any parent or subsidiary corporation if the applicant is a  
7 corporation:
- 8 a. Is financially qualified to carry out the activity for which a  
9 permit is required under subsection (a); and
- 10 b. Has substantially complied with the air quality and emission  
11 control standards applicable to any activity in which the  
12 applicant has previously engaged, and has been in substantial  
13 compliance with federal and state laws, regulations, and rules  
14 for the protection of the environment;
- 15 (6) To adopt rules, as it deems necessary, establishing the form of  
16 applications and permits and procedures for the granting or denial of  
17 permits and renewals pursuant to this section; and all permits, renewals  
18 and denials shall be in writing;
- 19 (7) To prohibit any stationary source within the State from emitting any  
20 air pollutant in amounts which will prevent attainment or maintenance  
21 by any other state of any national ambient air quality standard, or  
22 interference with measures required to be included in the applicable  
23 implementation plan for any other state to prevent deterioration of air  
24 quality or protect visibility.

25 The Commission shall act on a permit application as quickly as possible. The  
26 Commission may conduct any inquiry or investigation it considers necessary before  
27 acting on an application and may require an applicant to submit plans, specifications,  
28 and other information the Commission considers necessary to evaluate the application.  
29 If the Commission fails to act on an application for a permit within 90 days after the  
30 applicant submits all information required by the Commission, the application is  
31 considered to be ~~approved~~-approved, unless provided otherwise by this subsection.

32 Upon receipt of a complete application by the Department for a permit under this  
33 subsection, the Department shall give 14 days' notice with an opportunity for written  
34 comments prior to any final action granting or denying the permit. Public notice shall  
35 be given by publication of the notice one time in a newspaper having general circulation  
36 within the county.

37 The Department shall refer each application for a permit to its staff for written  
38 evaluation and proposed determination with regard to the issuance or denial of the  
39 permit. When the Commission receives a determination from its staff regarding the  
40 issuance or denial of a permit or renewal of a permit, the Commission shall give notice  
41 of the application and the proposed determination to the proper State, interstate, and  
42 federal agencies, to interested persons, and to the public. The Commission shall also  
43 provide any other data it considers appropriate to those notified. The Commission shall  
44 prescribe the form and content of the notice.

1       The notice shall be given at least 45 days prior to any final action granting or  
2 denying the permit. Public notice shall be given by publication of the notice one time in  
3 a newspaper having general circulation within the county.

4       If any person desires a public meeting on any application for a permit, he shall  
5 request one in writing to the Commission within 30 days following date of the notice of  
6 application. The Commission shall consider all such requests for a meeting, and if the  
7 Commission determines that there is a significant public interest in holding such a  
8 meeting at least 30 days' notice of such meeting shall be given to all persons to whom  
9 notice of application was sent and to any other person requesting notice. At least 30  
10 days prior to the date of meeting, the Commission shall also have a copy of the notice of  
11 the meeting published at least one time in a newspaper having general circulation in  
12 such county. The Commission shall prescribe the form and content of the notices.

13       The Commission shall prescribe the procedures to be followed in such meetings. If  
14 the meeting is not conducted by the Commission, detailed minutes of the meeting shall  
15 be kept and shall be submitted, along with any other written comments, exhibits, or  
16 documents presented at the meeting, to the Commission for its consideration prior to  
17 final action granting or denying the permit.

18       Not later than 60 days following notice of application or, if a public meeting is held,  
19 within 90 days following consideration of the matters and things presented at such  
20 meeting, the Commission shall grant or deny any application for issuance of a new  
21 permit. All permits issued by the Commission and all decisions denying application for  
22 permit shall be in writing.

23       A permit applicant or permittee who is dissatisfied with a decision of the  
24 commission may commence a contested case by filing a petition under G.S. 150B-23  
25 within 30 days after the Commission notifies the applicant or permittee of its decision.  
26 If the permit applicant or permittee does not file a petition within the required time, the  
27 Commission's decision on the application is final and is not subject to review.”

28       Sec. 2. G.S. 143-215.110 reads as rewritten:

29       **“§ 143-215.110. Special orders**

30       (a) Issuance. – The Commission is hereby empowered, after the effective date of  
31 standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from  
32 time to time to modify or revoke) a special order or other appropriate instrument, to any  
33 person whom it finds responsible for causing or contributing to any pollution of the air  
34 within the area for which standards have been established. Such an order or instrument  
35 may direct such person to take or refrain from taking such action, or to achieve such  
36 results, within a period of time specified by such special order, as the Commission  
37 deems necessary and feasible in order to alleviate or eliminate such pollution. The  
38 Commission is authorized to enter into draft consent special orders, assurances of  
39 voluntary compliance or other similar documents by agreement with the person  
40 responsible for pollution of the air, subject to the provisions of subsection (a1) of this  
41 section regarding draft orders, and such ~~document~~ document, when finalized by the  
42 Commission after public review, shall have the same force and effect as a special order  
43 of the Commission issued pursuant to hearing.

1        (a1) Public notice and review.— Upon entering into a draft consent order, the  
2 Department shall give 14 days' notice with an opportunity for written comments prior to  
3 any final action regarding the draft consent order. Public notice shall be given by  
4 publication of the notice one time in a newspaper having general circulation within the  
5 county.

6        Then the Commission shall give notice of the draft consent order to the proper State,  
7 interstate, and federal agencies, to interested persons, and to the public. The  
8 Commission shall also provide any other data it considers appropriate to those notified.  
9 The Commission shall prescribe the form and content of the notice. This notice shall be  
10 given at least 45 days prior to any final action regarding the draft consent order. Public  
11 notice shall be given by publication of the notice one time in a newspaper having  
12 general circulation within the county.

13        If any person desires a public meeting on any draft consent order he shall request  
14 one in writing to the Commission within 30 days following date of the notice of the  
15 draft consent order. The Commission shall consider all such requests for meeting, and  
16 if the Commission determines that there is a significant public interest in holding such  
17 meeting at least 30 days' notice of such meeting shall be given to all persons to whom  
18 notice of the draft consent order was sent and to any other person requesting notice. At  
19 least 30 days prior to the date of meeting, the Commission shall also have a copy of the  
20 notice of the meeting published at least one time in a newspaper having general  
21 circulation in such county. The Commission shall prescribe the form and consent of the  
22 notices.

23        The Commission shall prescribe the procedures to be followed in such meetings. If  
24 the meeting is not conducted by the Commission, detailed minutes of the meeting shall  
25 be kept and shall be submitted, along with any other written comments, exhibits or  
26 documents presented at the meeting, to the Commission for its consideration prior to  
27 final action granting or denying the permit.

28        Not later than 60 days following notice of the draft consent order or, if a public  
29 meeting is held, within 90 days following consideration of the matters and things  
30 presented at such meeting, the Commission shall finalize the draft consent order.

31        (b) Procedure to Contest Certain Orders. – A special order that is issued without  
32 the consent of the person affected may be contested by that person by filing a petition  
33 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
34 person affected does not file a petition within the required time, the order is final and is  
35 not subject to review.

36        (d) Effect of Compliance. – Any person who installs an air- cleaning device for  
37 purpose of alleviating or eliminating air pollution in compliance with the terms of, or as  
38 result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a  
39 special order, consent special order, assurance of voluntary compliance or similar  
40 document issued pursuant to this section, or a final decision of the Commission or a  
41 court, rendered pursuant to either of said sections, shall not be required to take or refrain  
42 from any further action nor be required to achieve any further results under the terms of  
43 this or any other State law relating to the control of air pollution, for a period to be fixed  
44 by the Commission or court as it shall deem fair and reasonable in the light of all the

1 circumstances after the date such special order, consent special order, assurance of  
2 voluntary compliance, other document or decision, or the conditions of such permit  
3 become finally effective, if:

- 4 (1) The air-cleaning devices result in the elimination or alleviation of air  
5 pollution to the extent required by such permit, special order, consent  
6 special order, assurance of voluntary compliance, or other document or  
7 decision and complies with any other terms thereof; and  
8 (2) Such person complies with the terms and conditions of such permit,  
9 special order, consent special order, assurance of voluntary  
10 compliance, other document or decision within the time limit, if any,  
11 specified therein or as the same may be extended, and thereafter  
12 remains in compliance."

13 Sec. 3. G.S. 143-215.2 reads as rewritten:

14 **"§ 143-215.2. Special orders.**

15 (a) Issuance. – The Commission is hereby empowered, after the effective date of  
16 classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S.  
17 143-215, to issue (and from time to time to modify or revoke) a special order, or other  
18 appropriate instrument, to any person whom it finds responsible for causing or  
19 contributing to any pollution of the waters of the State within the area for which  
20 standards have been established. Such an order or instrument may direct such person to  
21 take, or refrain from taking such action, or to achieve such results, within a period of  
22 time specified by such special order, as the Commission deems necessary and feasible  
23 in order to alleviate or eliminate such pollution. The Commission is authorized to enter  
24 into draft consent special orders, assurances of voluntary compliance or other similar  
25 documents by agreement with the person responsible for pollution of the ~~water~~–water,  
26 subject to the provisions of subsection (a1) of this section regarding draft orders, and  
27 such ~~document~~–document, when finalized by the Commission after public review, shall  
28 have the same force and effect as a special order of the Commission issued pursuant to  
29 hearing. Provided, however, that the provisions of this section shall not apply to any  
30 agricultural operation, such as the use or preparation of any land for the purposes of  
31 planting, growing, or harvesting plants, crops, trees or other agricultural products, or  
32 raising livestock or poultry.

33 (a1) Public Notice and Review.– Upon entering into a draft consent order, the  
34 Department shall give 14 days' notice with an opportunity for written comments prior to  
35 any final action regarding the draft consent order. Public notice shall be given by  
36 publication of the notice one time in a newspaper having general circulation within the  
37 county.

38 Then the Commission shall give notice of the draft consent order to the proper State,  
39 interstate, and federal agencies, to interested persons, and to the public. The  
40 Commission shall also provide any other data it considers appropriate to those notified.  
41 The Commission shall prescribe the form and content of the notice. The notice shall be  
42 given at least 45 days prior to any final action regarding the draft consent order. Public  
43 notice shall be given by publication of the notice one time in a newspaper having  
44 general circulation within the county.

1 If any person desires a public meeting on any draft consent order he shall request  
2 one in writing to the Commission within 30 days following date of the notice of the  
3 draft consent order. The Commission shall consider all such requests for meeting, and  
4 if the Commission determines that there is a significant public interest in holding such  
5 meeting at least 30 days' notice of such meeting shall be given to all persons to whom  
6 notice of the draft consent order was sent and to any other person requesting notice. At  
7 least 30 days prior to the date of meeting, the Commission shall also have a copy of the  
8 notice of the meeting published at least one time in a newspaper having general  
9 circulation in such county. The Commission shall prescribe the form and content of the  
10 notices.

11 The Commission shall prescribe the procedures to be followed in such meetings. If  
12 the meeting is not conducted by the Commission, detailed minutes of the meeting shall  
13 be kept and shall be submitted, along with any other written comments, exhibits or  
14 documents presented at the meeting, to the Commission for its consideration prior to  
15 final action granting or denying the permit.

16 Not later than 60 days following notice of the draft consent order or, if a public  
17 meeting is held, within 90 days following consideration of the matters and things  
18 presented at such meeting, the Commission shall finalize the draft consent order.

19 (b) Procedure to Contest Certain Orders. – A special order that is issued without  
20 the consent of the person affected may be contested by that person by filing a petition  
21 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
22 person affected does not file a petition within the required time, the order is final and is  
23 not subject to review.

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

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

1           Sec. 4. This act shall become effective October 1, 1989, and applies to all  
2 applications for air quality permits made on or after that date and all draft consent  
3 orders entered into on or after that date.