

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 156
HOUSE BILL 344

AN ACT TO AMEND THE GENERAL STATUTES CONCERNING WATER
POLLUTION PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1 reads as rewritten:

"§ 143-215.1. Control of sources of water pollution; permit required.

(a) Activities for Which Permits Required. – 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 Commission 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 any 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;
- (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 Commission 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;
- (9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto;
- (10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or ~~animals~~-animals;
- (11) Cause or permit discharges regulated under G.S. 143-214.7 which result in water pollution.

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 Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency which administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission 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 on the public health.

In any case where the Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Commission'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) Commission's Power as to Permits. –

- (1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.
- (2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for

development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

- (3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.
- (4) The Commission shall have the power:
 - a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.
 - b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:
 1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and
 2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

 - c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.
 - d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
 1. The environmental impact of the activities;
 2. How often the activities are carried out;
 3. The need for individual permit oversight; and
 4. The need for public review and comment on individual permits.
 - e. To designate certain classes of minor activities for which:
 1. Performance conditions may be established by rule; and
 2. Individual or general permits are not required.

~~(b1) The Commission shall adopt rules which exempt the filter backwash facilities of swimming pools and spas from the:~~

~~(1) Application and notice requirements of this section;~~

- ~~(2) Reporting requirements of G.S. 143-215.65;~~
- ~~(3) Monitoring requirements of G.S. 143-215.66; and~~
- ~~(4) Requirements of subsection (a) of this section that the Department review and approve of each individual facility.~~

(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

- (1) All applications for permits and for renewal of existing permits for 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 Commission may prescribe the form of such applications. All applications shall be filed with the Commission 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 Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

- (2) a. The Department shall refer each application for permit, or renewal of an existing permit, for 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 Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Commission 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 publication of the notice one time in a newspaper having general circulation within the county.

- b. Repealed by Session Laws 1987, c. 734.
- (3) If any person desires a public meeting on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for meeting, and if the Commission determines that there is a significant public interest in holding such meeting, at least 30 days' notice of such meeting shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30

days prior to the date of meeting, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

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

- (4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission 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 Commission 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.
- (6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission

may proceed to consider the permit application notwithstanding this subdivision.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, 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 Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. 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 Commission. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(e) Administrative Review. – A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or

permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision is final and is not subject to review.

(f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service is already being provided by the municipality to the permit applicant or connection to the municipal sewer system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program that:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this Part;
- (2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and ~~plans~~; plans upon request by the Commission;
- (3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this State;
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process;
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program;
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer system; and
- (8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

Notwithstanding any other provision of this subsection, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the discharge of waste and pollutants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification."

Sec. 2. This act is effective October 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives