

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 386

Environment and Natural Resources Committee Substitute Adopted 5/13/91

Third Edition Engrossed 5/16/91

House Committee Substitute Favorable 6/13/91

Short Title: Eco. Impact Req./Exceed US Air/Water Regs.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THOSE PORTIONS OF THE GENERAL STATUTES THAT LIMIT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO THE ADOPTION OF ENVIRONMENTAL RULES REGARDING WATER QUALITY AND AIR QUALITY THAT ARE NO MORE RESTRICTIVE THAN FEDERAL ENVIRONMENTAL REGULATIONS TO PROVIDE THAT AN EVALUATION OF THE IMPACT OF SUCH RULES BE PREPARED BEFORE SUCH RULES ARE ADOPTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213(23) reads as rewritten:

"(23) The term 'effluent standards' or 'effluent limitations' standards or limitations means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State."

Sec. 2. G.S. 143-215 reads as rewritten:

**"§ 143-215. Effluent standards ~~and-or~~ limitations.**

(a) The Commission is authorized and directed to develop, adopt, modify and revoke effluent standards ~~and-or~~ limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent

1 standards or limitations ~~or~~ and management practices may provide, without limitation,  
2 standards or limitations or management practices for any point source or sources;  
3 standards, limitations, management practices, or prohibitions for toxic wastes or  
4 combinations of toxic wastes discharged from any point source or sources; and  
5 pretreatment standards for wastes discharged to any disposal system subject to effluent  
6 standards or limitations or management practices.

7 (b) The effluent standards ~~and~~ or limitations developed and adopted by the  
8 Commission shall provide limitations upon the effluents discharged from pretreatment  
9 facilities and from outlets and point sources to the waters of the State adequate to limit  
10 the waste loads upon the waters of the State to the extent necessary to maintain or  
11 enhance the chemical, physical, biological and radiological integrity of the waters. The  
12 management practices developed and adopted by the Commission shall prescribe  
13 practices necessary to be employed in order to prevent or reduce contribution of  
14 pollutants to the State's waters.

15 (c) (1) In adopting effluent standards ~~and~~ or limitations and  
16 management practices the Commission shall be guided by the same  
17 considerations and criteria set forth, from time to time, in federal law  
18 for the guidance of federal agencies administering the Federal Water  
19 Pollution Control Program. ~~It is the intent of the General Assembly that~~  
20 ~~the Act. The~~ effluent standards and or limitations and management  
21 practices adopted hereunder shall be no more restrictive than the  
22 most nearly applicable federal effluent standards and or limitations  
23 and management practices unless the Commission first  
24 considers, among other things, an evaluation, prepared by the  
25 Department in accordance with this subsection, of the impact of the  
26 proposed effluent standards or limitations and management practices  
27 and finds that the environmental, public health, safety, and welfare  
28 benefits of such proposed effluent standards or limitations and  
29 management practices justify their costs.

30 (2) The Department shall prepare and submit into the record of the rule-  
31 making hearing an evaluation of the proposed standards or limitations  
32 and management practices. The study shall include an estimate of the  
33 economic and social costs to commerce and industry, units of local  
34 government, and agriculture to comply with the proposed standards or  
35 limitations and management practices and an examination of the  
36 environmental, public health, safety, and welfare benefits from the  
37 proposed effluent standards or limitations and management practices.  
38 The evaluation shall present relevant data, assumptions, analysis, and  
39 calculations in sufficient detail to allow the agency and any reviewing  
40 person or entity to understand the information presented. The  
41 evaluation shall be as extensive as is practicable, in the judgment of  
42 the agency, taking into account the time and resources available to the  
43 agency and the other duties which the agency is required to carry out.

- 1           (3)    In preparing the evaluation required by this subsection, the Department  
2           may call upon any agency of the State government, the Agricultural  
3           Extension Service, the institutions of The University of North  
4           Carolina, and private contractors regarding the acquisition and analysis  
5           of data necessary to prepare the evaluation required by this subsection.
- 6           (4)    The evaluation required by this subsection shall take into account the  
7           uncertainties associated with the estimation of benefits and costs and  
8           the difficulties involved in the comparison of qualitatively and  
9           quantitatively dissimilar benefits and costs. Benefits and costs which  
10           cannot be quantified may be expressed in qualitative terms.
- 11          (5)    This subsection shall not be interpreted to require a numerical cost-  
12           benefit analysis nor to require an evaluation that is inconsistent with  
13           federal law or regulation. Nothing in this subsection shall be  
14           construed to either alter the basis on which a standard or rule is  
15           promulgated or preclude an agency from carrying out its responsibility  
16           to protect public health and welfare. Limits and conditions to protect  
17           water quality standards that are included in permits issued under this  
18           Article are not subject to the requirements of this subsection.
- 19          (6)    In any judicial review of the rule that is the subject of the study, the  
20           entry into the record before the court of the finding as to such impacts  
21           by the Commission creates a rebuttable presumption that the  
22           environmental, public health, safety, and welfare benefits from the  
23           proposed effluent standards or limitations and management practices  
24           exceed their social and economic costs. To overcome the  
25           presumption, persons challenging the rule must present clear and  
26           convincing evidence that the benefits of the agency rule do not justify  
27           the costs.
- 28          (7)    This subsection does not require that an evaluation be prepared for any  
29           rule for which there is no comparable federal effluent limitation or  
30           standard.
- 31          (d)    ~~Notwithstanding the provisions of subsection (c) of this section, the Environmental~~  
32           ~~Management~~ The Commission may adopt rules applicable to any facility which that is  
33           sited or operated pursuant to Chapter 130B of the General Statutes which that  
34           incorporate standards and restrictions which or limitations and management practices that  
35           exceed and are more comprehensive than comparable federal regulations. The  
36           procedures set out in subsection (c) of this section do not apply to the adoption of such  
37           rules.
- 38          (e)    Except as required by federal law or regulations, the Commission may not  
39           adopt effluent standards or limitations applicable to animal and poultry feeding  
40           operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other  
41           conveyances have been constructed for the purpose of willfully discharging pollutants  
42           to the waters of the State, the Commission shall have the authority to assess fines and  
43           penalties not to exceed five thousand dollars (\$5,000) for the first offense. The

1 definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990  
2 Edition) shall apply to this subsection."

3 Sec. 3. G.S. 143-215.107 reads as rewritten:

4 **"§ 143-215.107. Air quality standards and classifications.**

5 (a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed  
6 and empowered, as rapidly as possible within the limits of funds and facilities available  
7 to it, and subject to the procedural requirements of this Article and Article 21:

8 (1) To prepare and develop, after proper study, a comprehensive plan or  
9 plans for the prevention, abatement and control of air pollution in the  
10 State or in any designated area of the State.

11 (2) To determine by means of field sampling and other studies, including  
12 the examination of available data collected by any local, State or  
13 federal agency or any person, the degree of air contamination and air  
14 pollution in the State and the several areas of the State.

15 (3) To develop and adopt, after proper study, air quality standards  
16 applicable to the State as a whole or to any designated area of the State  
17 as the Commission deems proper in order to promote the policies and  
18 purposes of this Article and Article 21 most effectively.

19 (4) To collect information or to require reporting from classes of sources  
20 which, in the judgment of the Environmental Management  
21 Commission, may cause or contribute to air pollution. Any person  
22 operating or responsible for the operation of air contaminant sources of  
23 any class for which the Commission requires reporting shall make  
24 reports containing such information as may be required by the  
25 Commission concerning location, size, and height of contaminant  
26 outlets, processes employed, fuels used, and the nature and time  
27 periods or duration of emissions, and such other information as is  
28 relevant to air pollution and available or reasonably capable of being  
29 assembled.

30 (5) To develop and adopt such emission control standards as in the  
31 judgment of the Commission may be necessary to prohibit, abate or  
32 control air pollution commensurate with established air quality  
33 standards. Such standards may be applied uniformly to the State as a  
34 whole or to any area of the State designated by the Commission.

35 (6) To adopt, when necessary and practicable, a program for testing  
36 emissions from motor vehicles and to adopt motor vehicle emission  
37 standards in compliance with applicable federal regulations.

38 (7) To develop and adopt standards and plans necessary to implement  
39 programs for the prevention of significant deterioration and for the  
40 attainment of air quality standards in nonattainment areas; ~~provided, that~~  
41 ~~the Commission shall adopt no standard which is not made mandatory upon~~  
42 ~~approved State programs by rules, regulations or published guidelines of the~~  
43 ~~United States Environmental Protection Agency or the Federal Clean Air~~  
44 ~~Act.~~ areas.

1 (b) Criteria for Standards. – In developing air quality and emission control  
2 standards, the Commission shall recognize varying local conditions and requirements  
3 and may prescribe different standards for different areas as may be necessary and  
4 appropriate to facilitate accomplishment of the stated purposes of this Article and  
5 Article 21.

6 (c) Chapter 150B of the General Statutes governs the adoption and publication of  
7 rules under this Article.

8 ~~(f) Guidance of Federal Criteria and Legislative Intent. – In adopting air quality~~  
9 ~~policies, rules, and procedures, the Commission or any other State or local regulatory~~  
10 ~~body shall be guided by the same standards, definitions, considerations and criteria set~~  
11 ~~forth, from time to time, in federal law, rules or regulations for the guidance of federal,~~  
12 ~~State or local agencies administering the Federal Clean Air Program.~~

13 ~~It is the intent of the General Assembly (i) that the air quality rules, procedures,~~  
14 ~~plans, practices, air quality standards, and emission control standards~~

15 (1) Emission control standards adopted by the Commission pursuant to  
16 this Article or Article 21, or by any other State or local regulatory  
17 body ~~under the General Statutes of North Carolina,~~ shall be no more  
18 restrictive and no more stringent than ~~required~~ necessary to comply  
19 with federal ambient air quality standards or other applicable federal  
20 requirements, if any, adopted in final or proposed regulations by the United  
21 States Environmental Protection Agency under or pursuant to the Federal  
22 Clean Air Act, and amendments thereto; ~~except (ii) that no air quality rules,~~  
23 ~~procedures, plans, practices, air quality standards or emission control~~  
24 ~~standards shall be adopted by the Commission with respect to matters on~~  
25 ~~which the United States Environmental Protection Agency has not proposed~~  
26 ~~or adopted final regulations~~ requirements unless the Commission first  
27 considers, among other things, an assessment ~~evaluation~~ of the  
28 economic impact of the proposed standards. emission control standards  
29 and finds that the benefits of such proposed emission control standards  
30 justify their costs.

31 (2) The Department shall prepare and submit into the record of the rule-  
32 making hearing an ~~economic impact study~~ evaluation, prepared by the  
33 Department in accordance with this subsection, of such proposed  
34 standards. ~~Such~~ The study shall include an estimate of the economic  
35 and social costs to commerce and industry, units of local government,  
36 and agriculture ~~necessary~~ to comply with the proposed standards and an  
37 examination of ~~the economic and social benefits of such compliance.~~ their  
38 environmental, public health, safety, and welfare benefits. The  
39 evaluation shall present relevant data, assumptions, analysis, and  
40 calculations in sufficient detail to allow the agency and any reviewing  
41 person or entity to understand the information presented. The  
42 evaluation shall be as extensive as is practicable, in the judgment of  
43 the agency, taking into account the time and resources available to the  
44 agency and the other duties which the agency is required to carry out.

- 1           (3)    In preparing the evaluation required by this subsection, the Department  
2           may call upon any agency of the State government, the Agricultural  
3           Extension Service, the institutions of The University of North  
4           Carolina, and private contractors regarding the acquisition and analysis  
5           of data necessary to prepare the evaluation required by this subsection.  
6           (4)    The evaluation required by this subsection shall take into account the  
7           uncertainties associated with the estimation of benefits and costs and  
8           the difficulties involved in the comparison of qualitatively and  
9           quantitatively dissimilar benefits and costs. Benefits and costs which  
10           cannot be quantified may be expressed in qualitative terms.  
11          (5)    This subsection shall not be interpreted to require a numerical cost-  
12           benefit analysis nor to require an evaluation that is inconsistent with  
13           federal law or regulation. Nothing in this subsection shall be  
14           construed to either alter the basis on which a standard or rule is  
15           promulgated or preclude an agency from carrying out its responsibility  
16           to protect public health and welfare. Nothing in this subsection shall  
17           be construed to require that an evaluation be prepared if the time  
18           required for its preparation would cause the Commission to be unable  
19           to adopt rules in accordance with time deadlines established by the  
20           Congress of the United States or by the United States Environmental  
21           Protection Agency. Limits and conditions to protect air quality  
22           standards that are included in permits issued under this Article are not  
23           subject to the requirements of this subsection.  
24          (6)    In any judicial review of the rule that is the subject of the study, the  
25           entry into the record before the court of the finding as to such impacts  
26           by the Commission creates a rebuttable presumption that the  
27           environmental, public health, safety, and welfare benefits from the  
28           proposed emission control standards exceed their social and economic  
29           costs. To overcome the presumption, persons challenging the rule  
30           must present clear and convincing evidence that the benefits of the  
31           agency rule do not justify the costs.  
32          (7)    This subsection does not require that an evaluation be prepared for any  
33           rule for which there is no comparable federal emission control  
34           standard.

35          ~~(g) Notwithstanding the provisions of subdivision (a)(7) and subsection (f) of this~~  
36          ~~section, the Environmental Management~~ The Commission may adopt rules applicable to  
37          any facility which that is sited or operated pursuant to Chapter 130B of the General  
38          Statutes which that incorporate standards and restrictions which that exceed and are more  
39          comprehensive than comparable federal regulations. The procedures set out in  
40          subsection (f) of this section do not apply to the adoption of such rules."

41            Sec. 4. G.S. 130A-295.02(d) reads as rewritten:

42            "(d) Resident inspectors assigned to a commercial hazardous waste facility shall  
43            have unrestricted access to all operational areas of such facility at all times. For the  
44            protection of resident inspectors and the public, the provisions of G.S. 143-215.107(a)(7)

1 ~~and~~ G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to  
2 which a resident inspector is assigned."

3           Sec. 5. This act shall not be construed to affect the validity of any rule in  
4 force on the date this act becomes effective or to proposed rules for which a notice of  
5 rule making is published in the North Carolina Register before the date this act becomes  
6 effective.

7           Sec. 6. This act shall not be construed to obligate the General Assembly to  
8 make any appropriation to implement the provisions of this act. Each agency to which  
9 this act applies shall implement the provisions of this act from funds otherwise  
10 appropriated or available to that agency.

11           Sec. 7. This act becomes effective January 1, 1992.