

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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HOUSE BILL 1067

Short Title: Polluter Pay Legislation. (Public)

Sponsors: Representatives Harrison, Ager, Butler, and B. Richardson (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

June 1, 2018

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



1 that such a condition of water or air pollution exists and that it creates an  
2 emergency requiring immediate action to protect the public health and safety  
3 or to protect fish and wildlife, the Secretary of the Department with the  
4 concurrence of the Governor, shall order persons causing or contributing to  
5 the water or air pollution in question to reduce or discontinue immediately the  
6 emission of air contaminants or the discharge of wastes. Immediately after the  
7 issuance of such order, the chairman of the Commission shall fix a place and  
8 time for a hearing before the Commission to be held within 24 hours after  
9 issuance of such order, and within 24 hours after the commencement of such  
10 hearing, and without adjournment thereof, the Commission shall either affirm,  
11 modify or set aside the order.

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

24 (12a) If an investigation conducted pursuant to this Article or Article 21B of this  
25 Chapter reveals a condition of water or air pollution which is causing danger  
26 to the health or safety of the public, the Secretary of the Department may order  
27 persons causing or contributing to the water or air pollution in question to  
28 immediately reduce or discontinue the emissions of air contaminants or the  
29 discharge of wastes or to take such other measures as are, in the Secretary's  
30 judgment, necessary, without regard to any other provisions of this Article or  
31 Article 21B of this Chapter. The order may direct the person to take, or refrain  
32 from taking, an action, or to achieve a result, within a period of time specified  
33 by the order, as the Secretary deems necessary and feasible in order to alleviate  
34 or eliminate the pollution. In addition, the order may require the person to  
35 provide alternate water supplies to persons with water supplies damaged by  
36 the water or air pollution in question, or require the person to establish a  
37 permanent replacement water supply to persons with water supplies damaged  
38 by the water or air pollution in question, as appropriate in the judgment of the  
39 Secretary. In the case of permanent replacement water supply, the water  
40 supply shall be established by connection to a public water supply, except that  
41 an affected household may elect to receive a whole house filtration system in  
42 lieu of a connection to a public water supply, in which case the person  
43 responsible shall install a filtration system. For households for which filtration  
44 systems are installed, the person responsible shall be liable for any periodic  
45 required maintenance of the filtration system. The Secretary shall assess the  
46 person causing or contributing to the water or air pollution in question for any  
47 actual and necessary costs incurred by the State in removing, correcting, or  
48 abating any adverse effects upon the water or air resulting from the water or  
49 air pollution for which the person is responsible. If the person responsible for  
50 the water or air pollution in question refuses or fails within a reasonable time  
51 to pay any sums assessed, the Secretary may institute a civil action in the

1 superior court of the county in which the water or air pollution occurred or, in  
2 the Secretary's discretion, in the superior court of the county in which such  
3 person resides or has its principal place of business, to recover such sums.

4 ...."

5 **SECTION 1.(b)** G.S. 143-215.2(a) reads as rewritten:

6 **"§ 143-215.2. Special orders.**

7 (a) Issuance. – The Commission may, after the effective date of classifications, standards  
8 and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed  
9 management requirement adopted pursuant to G.S. 143-214.5, issue, and from time to time  
10 modify or revoke, a special order, or other appropriate instrument, to any person whom it finds  
11 responsible for causing or contributing to any pollution of the waters of the State within the area  
12 for which standards have been established. The order or instrument may direct the person to take,  
13 or refrain from taking an action, or to achieve a result, within a period of time specified by the  
14 special order, as the Commission deems necessary and feasible in order to alleviate or eliminate  
15 the pollution, including a requirement that the responsible person provide temporary  
16 alternate or permanent replacement water supplies to persons with water supplies damaged by  
17 the water pollution in question. The Commission is authorized to enter into consent special  
18 orders, assurances of voluntary compliance or other similar documents by agreement with the  
19 person responsible for pollution of the water, subject to the provisions of subsection (a1) of this  
20 section regarding proposed orders, and the consent order, when entered into by the Commission  
21 after public review, shall have the same force and effect as a special order of the Commission  
22 issued pursuant to hearing."

23 **SECTION 2.** G.S. 62-133.13 reads as rewritten:

24 **"§ 62-133.13. Recovery of costs related to the management of coal combustion residuals**  
25 **and unlawful discharges from coal combustion residuals surface impoundments**  
26 **to the surface waters of the State.**

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

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

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

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

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

48 **SECTION 3.** The sum of seventy-five thousand dollars (\$75,000) in recurring funds  
49 for the 2018-2019 fiscal year is appropriated from the unappropriated balance remaining in the  
50 General Fund to the Department of Environmental Quality to implement the requirements of this  
51 act.

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**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.