

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 968

Short Title: Legislative Response to Emerging Contaminants. (Public)

Sponsors: Representatives Butler, Harrison, W. Richardson, and Floyd (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, if favorable, Appropriations

May 21, 2018

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ENHANCED REQUIREMENTS FOR DISCHARGERS OF POLLUTANTS TO THE STATE'S AIR AND WATER, TO PROVIDE INCREASED FUNDING FOR THE DEPARTMENTS OF ENVIRONMENTAL QUALITY AND HEALTH AND HUMAN SERVICES, AND TO MAKE OTHER STATUTORY CHANGES NECESSARY TO ADDRESS CONTAMINATION OF DRINKING WATER SUPPLIES IN THE STATE IN ORDER TO PROTECT HUMAN HEALTH.

The General Assembly of North Carolina enacts:

RESTORE "EMISSIONS" TO THE DEFINITION OF "DISCHARGE" FOR PURPOSES OF WATER QUALITY REGULATION

SECTION 1. G.S. 143-213 reads as rewritten:

"§ 143-213. Definitions.

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A and 21B of this Chapter are defined as follows:

...
(9) Whenever reference is made in this Article to "discharge" or the "discharge of waste," it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or into any unified sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State. ~~A reference to "discharge" or the "discharge of waste" shall not be interpreted to include "emission" as defined in subdivision (12) of this section.~~

...
(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

...."

REPEAL HARDISON AMENDMENT

SECTION 2.(a) G.S. 150B-19.3 is repealed.

SECTION 2.(b) G.S. 130A-309.207 reads as rewritten:

"§ 130A-309.207. General rule making for Part.

The Environmental Management Commission shall adopt rules as necessary to implement the provisions of the Part. ~~Such rules shall be exempt from the requirements of G.S. 150B-19.3."~~

SECTION 2.(c) G.S. 130A-309.226 reads as rewritten:



1 **"§ 130A-309.226. Amendments required to rules.**

2 Requirements under existing rules governing the use of coal combustion products for
3 structural fill that do not conflict with the provisions of this Subpart shall continue to apply to
4 such projects. The Environmental Management Commission shall amend existing rules
5 governing the use of coal combustion products for structural fill as necessary to implement the
6 provisions of this Subpart. ~~Such rules shall be exempt from the requirements of G.S. 150B-19.3."~~

7
8 **PROHIBIT THE DISCHARGE OF UNREGULATED TOXIC POLLUTANTS;
9 REQUIRE SUSPENSION OF PERMITS WHERE THE PERMITTEE HAS
10 DISCHARGED A POLLUTANT NOT AUTHORIZED UNDER THE PERMIT AND FOR
11 WHICH THE PERMITTEE HAD NOT DISCLOSED THE POLLUTANT IN ITS
12 PERMIT APPLICATION; AND REQUIRE AN APPLICANT FOR A NPDES PERMIT
13 OR RENEWAL TO DISCLOSE ALL POLLUTANTS IN ITS DISCHARGE**

14 **SECTION 3.** G.S. 143-215.1 reads as rewritten:

15 **"§ 143-215.1. Control of sources of water pollution; permits required.**

16 ...
17 (a8) No person shall cause or permit any toxic waste, directly or indirectly, to be
18 discharged to or in any manner intermixed with the waters of the State, for which the United
19 States Environmental Protection Agency or the State has not established a health advisory
20 standard, health goal, or effluent standard or limitation. If a toxic waste does have a health
21 advisory standard, health goal, or effluent standard or limitation, or is the subject of a consent
22 order entered into by the United States Environmental Protection Agency under the Toxic
23 Substance Control Act, 15 U.S.C. § 2601, et seq., as amended, a permittee must comply with
24 whichever health goal, health standard, or effluent standard or limitation is more stringent. This
25 provision shall not apply to municipal wastewater treatment facilities.

26 (b) Commission's Power as to Permits. –

27 ...
28 (6) The Commission shall suspend a permit immediately upon discovery that a
29 permittee has caused or permitted any pollutant, directly or indirectly, to be
30 discharged to or in any manner intermixed with the waters of the State, which
31 pollutant is not authorized by such permit, or disclosed in the application for
32 such permit. This provision shall not apply to municipal wastewater treatment
33 facilities.

34 ...
35 (l) The Department shall require that every person applying for an individual National
36 Pollutant Discharge Elimination System (NPDES) permit fully disclose in its application for a
37 new permit, or for a permit renewal, each pollutant in the person's discharge that is at or above
38 the practical quantitation limit (PQL) for the pollutant, including emerging chemicals without
39 applicable discharge standards established under State or federal law. The pollutant's
40 concentration to be discharged shall be disclosed, as well the chemical abstracts service (CAS)
41 number for each pollutant if available. If the CAS number is unavailable, the pollutant shall
42 otherwise be described in sufficient detail so as to adequately inform the Department of the
43 pollutant's characteristics."

44
45 **POLLUTERS TO PROVIDE FILTRATION AND TREATMENT FOR WATER
46 SUPPLIES CONTAMINATED AS A RESULT OF AN UNAUTHORIZED DISCHARGE
47 OF A POLLUTANT**

48 **SECTION 4.** G.S. 143-215.3(a) reads as rewritten:

49 **"§ 143-215.3. General powers of Commission and Department; auxiliary powers.**

50 (a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this
51 Article, and for the purpose of carrying out its duties, the Commission shall have the power:

1 ...
2 (9) If an investigation conducted pursuant to this Article or Article 21B of this
3 Chapter reveals a violation of any rules, standards, or limitations adopted by
4 the Commission pursuant to this Article or Article 21B of this Chapter, or a
5 violation of any terms or conditions of any permit issued pursuant to
6 G.S. 143-215.1 or 143-215.108, or special order or other document issued
7 pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess
8 the reasonable costs of any investigation, inspection or monitoring survey
9 which revealed the violation against the person responsible therefor. If the
10 violation resulted in an unauthorized discharge to the waters or atmosphere of
11 the State, the Commission may also assess the person responsible for the
12 violation for any actual and necessary costs incurred by the State in removing,
13 correcting or abating any adverse effects upon the water or air resulting from
14 the unauthorized discharge. If the person responsible for the violation refuses
15 or fails within a reasonable time to pay any sums assessed, the Commission
16 may institute a civil action in the superior court of the county in which the
17 violation occurred or, in the Commission's discretion, in the superior court of
18 the county in which such person resides or has his or its principal place of
19 business, to recover such sums.

20 ...
21 (12) To declare an emergency when it finds that a generalized condition of water
22 or air pollution which is causing imminent danger to the health or safety of
23 the public. Regardless of any other provisions of law, if the Department finds
24 that such a condition of water or air pollution exists and that it creates an
25 emergency requiring immediate action to protect the public health and safety
26 or to protect fish and wildlife, the Secretary of the Department with the
27 concurrence of the Governor, shall order persons causing or contributing to
28 the water or air pollution in question to reduce or discontinue immediately the
29 emission of air contaminants or the discharge of wastes. Immediately after the
30 issuance of such order, the chairman of the Commission shall fix a place and
31 time for a hearing before the Commission to be held within 24 hours after
32 issuance of such order, and within 24 hours after the commencement of such
33 hearing, and without adjournment thereof, the Commission shall either affirm,
34 modify or set aside the order.

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

47 (12a) If the Secretary finds that a permittee has caused or permitted any pollutant,
48 directly or indirectly, to be discharged to or in any manner intermixed with
49 the waters of the State, which pollutant is not authorized by a permit, or which
50 pollutant was discharged in exceedance of standards or limitations included
51 in the permit, the Secretary shall order the permittee to provide and maintain

1 water filtration or treatment processes adequate to remove the pollutant for
 2 each local government located downstream from the point of discharge whose
 3 drinking water supplies would be impacted by the pollutant for as long as the
 4 pollutant persists in the environment. Permittees that have caused or permitted
 5 any pollutant, directly or indirectly, to be discharged to or in any manner
 6 intermixed with the waters of the State, which pollutant is not authorized by a
 7 permit, or which pollutant was discharged in exceedance of standards or
 8 limitations included in the permit, shall be financially responsible for the
 9 removal of the pollutant discharged from public or private drinking water
 10 supplies impacted by the pollutant.

11"

13 FUNDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY

14 **SECTION 5.(a)** The sum of fourteen million fifty-two thousand seven hundred
 15 seventeen dollars (\$14,052,717) in funds for the 2018-2019 fiscal year is appropriated from the
 16 General Fund to the Department of Environmental Quality as follows:

- 17 (1) Six million nine hundred ninety-six thousand three hundred thirty-three
 18 dollars (\$6,996,333) in recurring funds for positions and operations support to
 19 collect and analyze data that can be used to make informed decisions about
 20 managing per- and poly-fluoroalkyl substances (PFAS), including the
 21 chemical known as "GenX" (CAS registry number 62037-80-3 or
 22 13252-13-6), and to address National Pollutant Discharge Elimination System
 23 (NPDES) permit backlogs. Specifically, the funds may be used to support 39
 24 new full-time employees to conduct surface water, pore water, and water
 25 supply well sampling and analysis across the State, as well as to identify
 26 potential sources of contamination in groundwater, surface water, wastewater,
 27 soil, and sediment. These funds may also be used to allow the Division of Air
 28 Quality to conduct rainwater collection and scientific analysis for potential air
 29 pollutants across the State.
- 30 (2) One million nineteen thousand fifty dollars (\$1,019,050) in nonrecurring
 31 funds for scientific analytical equipment, time-limited positions, and
 32 operations support to enable the Department to quickly and affordably test the
 33 threat to public health and safety resulting from discharges of emerging
 34 compounds. Specifically, the funds may be used to support six new full-time
 35 employees for use of analytical equipment and processing of samples.
- 36 (3) One million five hundred thousand dollars (\$1,500,000) in nonrecurring funds
 37 for planning associated with needed upgrades to the Department's Reedy
 38 Creek Laboratory, in which water quality, water resources, and air quality
 39 analysis is performed.
- 40 (4) Two million six hundred forty-three thousand four hundred seventy-four
 41 dollars (\$2,643,474) in recurring funds for positions and operations support
 42 for the Department to launch a permitting transformation project to improve
 43 transparency and streamline the permitting process by providing online access
 44 and tracking for all permits.
- 45 (5) One million eight hundred ninety-three thousand eight hundred sixty dollars
 46 (\$1,893,860) in nonrecurring funds for time-limited positions and operations
 47 support for the Department to launch a permitting transformation project to
 48 improve transparency and streamline the permitting process by providing
 49 online access and tracking for all permits.

50 **SECTION 5.(b)** The sum of two hundred fifty thousand dollars (\$250,000) in
 51 recurring funds for the 2018-2019 fiscal year is appropriated from the General Fund to the

1 Department of Environmental Quality to partially restore funds eliminated by Section 13.26 of
2 S.L. 2017-57 (Department of Environmental Quality Reorganization Through Reduction).

3 **SECTION 5.(c)** Nonrecurring funds appropriated by this section for the 2018-2019
4 fiscal year shall not revert but shall remain available for nonrecurring expenses.

5
6 **FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO**
7 **ESTABLISH A WATER HEALTH AND SAFETY UNIT**

8 **SECTION 6.** The sum of five hundred thirty-six thousand dollars (\$536,000) in
9 recurring funds for the 2018-2019 fiscal year shall be appropriated from the General Fund to the
10 Department of Health and Human Services for positions to identify and prevent adverse health
11 effects due to toxic substances, including a medical risk assessor, a toxicologist, an
12 epidemiologist, and a public health educator.

13
14 **EXEMPTION FROM STATUTORY PROVISION CONCERNING ORDER OF**
15 **APPROPRIATIONS BILLS**

16 **SECTION 7.** The provisions of G.S. 143C-5-2 do not apply to this act.

17
18 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

19 **SECTION 8.(a)** If any section or provision of this act is declared unconstitutional or
20 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
21 the part declared to be unconstitutional or invalid.

22 **SECTION 8.(b)** Except as otherwise provided, this act is effective when it becomes
23 law.