

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 942

Short Title: Local Notice For Discharge Permits.

(Public)

Sponsors: Senators Cochrane; Hunt of Moore, Tally, Carpenter, Smith, and Walker.

Referred to: Environment and Natural Resources.

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO INCREASE LOCAL INVOLVEMENT IN THE DECISION TO ISSUE
A PERMIT TO DISCHARGE TO SURFACE WATERS.

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; permits 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

- 1 affect the condition of the receiving waters in relation to any of the
2 standards applicable to such waters;
- 3 (6) Cause or permit any waste, directly or indirectly, to be discharged to or
4 in any manner intermixed with the waters of the State in violation of
5 the water quality standards applicable to the assigned classifications or
6 in violation of any effluent standards or limitations established for any
7 point source, unless allowed as a condition of any permit, special order
8 or other appropriate instrument issued or entered into by the
9 Commission under the provisions of this Article;
- 10 (7) Cause or permit any wastes for which pretreatment is required by
11 pretreatment standards to be discharged, directly or indirectly, from a
12 pretreatment facility to any disposal system or to alter, extend or
13 change the construction or method of operation or increase the
14 quantity or change the nature of the waste discharged from or
15 processed in such facility;
- 16 (8) Enter into a contract for the construction and installation of any outlet,
17 sewer system, treatment works, pretreatment facility or disposal
18 system or for the alteration or extension of any such facilities;
- 19 (9) Dispose of sludge resulting from the operation of a treatment works,
20 including the removal of in-place sewage sludge from one location and
21 its deposit at another location, consistent with the requirement of the
22 Resource Conservation and Recovery Act and regulations promulgated
23 pursuant thereto.
- 24 (10) Cause or permit any pollutant to enter into a defined managed area of
25 the State's waters for the maintenance or production of harvestable
26 freshwater, estuarine, or marine plants or animals.

27 In the event that both effluent standards or limitations and classifications and water
28 quality standards are applicable to any point source or sources and to the waters to
29 which they discharge, the more stringent among the standards established by the
30 Commission shall be applicable and controlling.

31 In connection with the above, no such permit shall be granted for the disposal of
32 waste in waters classified as sources of public water supply where the Department of
33 Human Resources, after review of the plans and specifications for the proposed disposal
34 facility, determines and advises the Commission that such disposal is sufficiently close
35 to the intake works or proposed intake works of a public water supply as to have an
36 adverse effect on the public health.

37 In any case where the Commission denies a permit, it shall state in writing the
38 reason for such denial and shall also state the Commission's estimate of the changes in
39 the applicant's proposed activities or plans which will be required in order that the
40 applicant may obtain a permit.

41 (b) Commission's Power as to Permits. – The Commission shall act on all permits
42 so as to prevent, so far as reasonably possible, considering relevant standards under
43 State and federal laws, any significant increase in pollution of the waters of the State
44 from any new or enlarged sources.

1 The Commission shall have the power:

- 2 (1) To grant a permit with such conditions attached as the Commission
3 believes necessary to achieve the purposes of this Article;
4 (1a) To require that an applicant satisfy the Commission that the applicant,
5 or any parent or subsidiary corporation if the applicant is a
6 corporation:
7 a. Is financially qualified to carry out the activity for which the
8 permit is required under subsection (a); and
9 b. Has substantially complied with the effluent standards and
10 limitations and waste management treatment practices
11 applicable to any activity in which the applicant has previously
12 engaged, and has been in substantial compliance with other
13 federal and state laws, regulations, and rules for the protection
14 of the environment;
15 (2) Repealed by Session Laws 1975, c. 583, s. 4.
16 (3) To modify or revoke any permit upon not less than 60 days' written
17 notice to any person affected.

18 No permit shall be denied and no condition shall be attached to the permit, except
19 when the Commission finds such denial or such conditions necessary to effectuate the
20 purposes of this Article.

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

- 23 (1) All applications for permits and for renewal of existing permits for
24 outlets and point sources and for treatment works and disposal systems
25 discharging to the surface waters of the State shall be in writing, and
26 the Commission may prescribe the form of such applications. All
27 applications shall be filed with the Commission at least 180 days in
28 advance of the date on which it is desired to commence the discharge
29 of wastes or the date on which an existing permit expires, as the case
30 may be. A person applying for a new nonmunicipal permit under this
31 subsection shall also send notice by first-class mail to the county or
32 city manager, county health director, and city or county planning
33 director of the county or city in which the facility and discharge will be
34 located. The Commission shall act on a permit application as quickly
35 as possible. The Commission may conduct any inquiry or investigation
36 it considers necessary before acting on an application and may require
37 an applicant to submit plans, specifications, and other information the
38 Commission considers necessary to evaluate the application.
39 (2) a. The Department shall refer each application for permit, or renewal
40 of an existing permit, for outlets and point sources and treatment
41 works and disposal systems discharging to the surface waters of the
42 State to its staff for written evaluation and proposed determination
43 with regard to issuance or denial of the permit. If the Commission
44 concurs in the proposed determination, it shall cause notice of the

1 application and of the proposed determination, along with any other
2 data that the Commission may determine appropriate, to be given to
3 the appropriate State, interstate and federal agencies, to interested
4 persons, and to the public. The Commission shall prescribe the form
5 and content of the notice.

6 The notice required herein shall be given at least 45 days
7 prior to any proposed final action granting or denying the
8 permit. Public notice shall be given by publication of the notice
9 one time in a newspaper having general circulation within the
10 county.

11 b. Repealed by Session Laws 1987, c. 734.

12 (3) If any person desires a public meeting on any application for permit or
13 renewal of an existing permit provided for in this subsection, he shall
14 so request in writing to the Commission within 30 days following date
15 of the notice of application. The Commission shall consider all such
16 requests for meeting, and if the Commission determines that there is a
17 significant public interest in holding such meeting, at least 30 days'
18 notice of such meeting shall be given to all persons to whom notice of
19 application was sent and to any other person requesting notice. At least
20 30 days prior to the date of meeting, the Commission shall also cause a
21 copy of the notice thereof to be published at least one time in a
22 ~~newspaper having general circulation in such county.~~ the local newspaper
23 in the county that has the largest circulation within the county. The
24 Commission shall prescribe the form and content of the notices.

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

31 (4) Not later than 60 days following notice of application or, if a public
32 hearing is held, within 90 days following consideration of the matters
33 and things presented at such hearing, the Commission shall grant or
34 deny any application for issuance of a new permit or for renewal of an
35 existing permit. All permits or renewals issued by the Commission and
36 all decisions denying application for permit or renewal shall be in
37 writing.

38 (5) No permit issued pursuant to this subsection (c) shall be issued or
39 renewed for a term exceeding five years.

40 (d) Applications and Permits for Sewer Systems, Sewer System Extensions and
41 Pretreatment Facilities, and for Wastewater Treatment Facilities Not Discharging to the
42 Surface Waters of the State. – All applications for new permits and for renewals of
43 existing permits for sewer systems, sewer system extensions and for disposal systems or
44 treatment works which do not discharge to the surface waters of the State, and all

1 permits or renewals and decisions denying any application for permit or renewal shall
2 be in writing. The Commission shall act on a permit application as quickly as possible.
3 The Commission may conduct any inquiry or investigation it considers necessary before
4 acting on an application and may require an applicant to submit plans, specifications,
5 and other information the Commission considers necessary to evaluate the application.
6 If the Commission fails to act on an application for a permit, including a renewal of a
7 permit, within 90 days after the applicant submits all information required by the
8 commission, the application is considered to be approved. Permits and renewals issued
9 in approving such facilities pursuant to this subsection (d) shall be effective until the
10 date specified therein or until rescinded unless modified or revoked by the Commission.
11 Local governmental units to whom pretreatment program authority has been delegated
12 shall establish, maintain, and provide to the public, upon written request, a list of
13 pretreatment applications received.

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

34 (d2) The Commission shall not act upon a permit application for any proposed
35 new nonmunicipal discharge facility pursuant to subsection (c) until such time as it
36 receives a written 'position statement' from any and all municipal or county
37 governments having jurisdiction over the lands upon which the proposed facility and its
38 appurtenances are located. The statement shall be issued by the local county
39 commission, town or city council or official designee. The position statement shall
40 clearly indicate to the Environmental Management Commission whether the local
41 government objects or has no opposition to processing of the permit application based
42 on consideration of the project's consistency with local land use plans or zoning
43 ordinances. The Commission will not proceed with permit processing over a local
44 government objection unless the Commission determines that processing of the

1 application would be in the best public interest. The Commission may consider but
2 shall not be bound to incorporate permit conditions recommended by a local
3 government. If no local government position statement is received by the Commission
4 within 60 days of receipt of notice of the permit application to the Commission pursuant
5 to subsection (c), permit processing may proceed as normal to its completion.

6 (e) Administrative Review. – A permit applicant or permittee who is dissatisfied
7 with a decision of the Commission may commence a contested case by filing a petition
8 under G.S. 150B-23 within 30 days after the Commission notifies the applicant or
9 permittee of its decision. If the permit applicant or permittee does not file a petition
10 within the required time, the Commission's decision is final and is not subject to review.

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

- 27 (1) Provides by ordinance or local law for requirements compatible with
28 those imposed by this Part and the rules implementing this Part;
- 29 (2) Provides that the Department receives notice and a copy of each
30 application for a permit and that it receives copies of approved permits
31 and plans;
- 32 (3) Provides that plans and specifications for all construction, extensions,
33 alterations, and changes be prepared by or under the direct supervision
34 of an engineer licensed to practice in this State;
- 35 (4) Provides for the adequate enforcement of the program requirements by
36 appropriate administrative and judicial process;
- 37 (5) Provides for the adequate administrative organization, engineering
38 staff, financial and other resources necessary to effectively carry out its
39 plan review program;
- 40 (6) Provides that the system is capable of interconnection at an
41 appropriate time with an expanding municipal, county, or regional
42 system;
- 43 (7) Provides for the adequate arrangement for the continued operation,
44 service, and maintenance of the sewer system; and

1 (8) Is approved by the Commission as adequate to meet the requirements
2 of this Part and the rules implementing this Part.

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

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

16 Sec. 2. This act shall become effective October 1, 1989, and applies to
17 permits issued on and after that date.