GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 968
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40697-BRa-11A

Short Title:	Legislative Response to Emerging Contaminants.	(Public)
Sponsors:	Representatives Butler, Harrison, W. Richardson, and Floyd (Primary Sponsors).	
Referred to:		

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SECTION 2.(a) G.S. 150B-19.3 is repealed.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

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

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

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

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

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

…

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

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

…

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

…

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

POLLUTERS TO PROVIDE FILTRATION AND TREATMENT FOR WATER SUPPLIES CONTAMINATED AS A RESULT OF AN UNAUTHORIZED DISCHARGE OF A POLLUTANT

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

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

<u>(12a)</u> <u>If the Secretary finds that a permittee has caused or permitted any pollutant, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State, which pollutant is not authorized by a permit, or which pollutant was discharged in exceedance of standards or limitations included in the permit, the Secretary shall order the permittee to provide and maintain water filtration or treatment processes adequate to remove the pollutant for</u>

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

…."

FUNDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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

(1) Six million nine hundred ninety-six thousand three hundred thirty-three dollars ($6,996,333) in recurring funds for positions and operations support to collect and analyze data that can be used to make informed decisions about managing per- and poly-fluoroalkyl substances (PFAS), including the chemical known as "GenX" (CAS registry number 62037-80-3 or 13252-13-6), and to address National Pollutant Discharge Elimination System (NPDES) permit backlogs. Specifically, the funds may be used to support 39 new full-time employees to conduct surface water, pore water, and water supply well sampling and analysis across the State, as well as to identify potential sources of contamination in groundwater, surface water, wastewater, soil, and sediment. These funds may also be used to allow the Division of Air Quality to conduct rainwater collection and scientific analysis for potential air pollutants across the State.

(2) One million nineteen thousand fifty dollars ($1,019,050) in nonrecurring funds for scientific analytical equipment, time-limited positions, and operations support to enable the Department to quickly and affordably test the threat to public health and safety resulting from discharges of emerging compounds. Specifically, the funds may be used to support six new full-time employees for use of analytical equipment and processing of samples.

(3) One million five hundred thousand dollars ($1,500,000) in nonrecurring funds for planning associated with needed upgrades to the Department's Reedy Creek Laboratory, in which water quality, water resources, and air quality analysis is performed.

(4) Two million six hundred forty-three thousand four hundred seventy-four dollars ($2,643,474) in recurring funds for positions and operations support for the Department to launch a permitting transformation project to improve transparency and streamline the permitting process by providing online access and tracking for all permits.

(5) One million eight hundred ninety-three thousand eight hundred sixty dollars ($1,893,860) in nonrecurring funds for time-limited positions and operations support for the Department to launch a permitting transformation project to improve transparency and streamline the permitting process by providing online access and tracking for all permits.

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

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

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

FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A WATER HEALTH AND SAFETY UNIT

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

EXEMPTION FROM STATUTORY PROVISION CONCERNING ORDER OF APPROPRIATIONS BILLS

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

SEVERABILITY CLAUSE AND EFFECTIVE DATE

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

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