

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS45256-RIa-23C\*

Short Title: Polluter Pays.

(Public)

Sponsors: Senators Garrett, Marcus, and deViere (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE PERSONS CAUSING OR CONTRIBUTING TO CONTAMINATION  
3 RESPONSIBLE FOR COSTS OF CLEANUP AND PROVISION OF ALTERNATIVE  
4 WATER SUPPLIES TO PERSONS WITH WATER SUPPLIES AFFECTED BY SUCH  
5 CONTAMINATION AND TO PROHIBIT AN ELECTRIC PUBLIC UTILITY FROM  
6 RECOVERING COSTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION  
7 ASH AND UNLAWFUL DISCHARGES FROM COAL ASH PONDS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) G.S. 143-215.3(a) reads as rewritten:

10 "§ 143-215.3. General powers of Commission and Department; auxiliary powers.

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

13 ...

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

32 ...

33 (12) To declare an emergency when it finds that a generalized condition of water  
34 or air pollution which is causing imminent danger to the health or safety of  
35 the public. Regardless of any other provisions of law, if the Department finds  
36 that such a condition of water or air pollution exists and that it creates an



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

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

23 (12a) If an investigation conducted pursuant to this Article or Article 21B of this  
24 Chapter reveals a condition of water or air pollution which is causing danger  
25 to the health or safety of the public, the Secretary of the Department may order  
26 persons causing or contributing to the water or air pollution in question to  
27 immediately reduce or discontinue the emissions of air contaminants or the  
28 discharge of wastes or to take such other measures as are, in the Secretary's  
29 judgment, necessary, without regard to any other provisions of this Article or  
30 Article 21B of this Chapter. The order may direct the person to take, or refrain  
31 from taking, an action, or to achieve a result, within a period of time specified  
32 by the order, as the Secretary deems necessary and feasible in order to alleviate  
33 or eliminate the pollution. In addition, the order may require the person to  
34 provide alternate water supplies to persons with water supplies damaged by  
35 the water or air pollution in question, or require the person to establish a  
36 permanent replacement water supply to persons with water supplies damaged  
37 by the water or air pollution in question, as appropriate in the judgment of the  
38 Secretary. In the case of permanent replacement water supply, the water  
39 supply shall be established by connection to a public water supply, except that  
40 an affected household may elect to receive a whole house filtration system in  
41 lieu of a connection to a public water supply, in which case the person  
42 responsible shall install a filtration system. For households for which filtration  
43 systems are installed, the person responsible shall be liable for any periodic  
44 required maintenance of the filtration system. The Secretary shall assess the  
45 person causing or contributing to the water or air pollution in question for any  
46 actual and necessary costs incurred by the State in removing, correcting, or  
47 abating any adverse effects upon the water or air resulting from the water or  
48 air pollution for which the person is responsible. If the person responsible for  
49 the water or air pollution in question refuses or fails within a reasonable time  
50 to pay any sums assessed, the Secretary may institute a civil action in the  
51 superior court of the county in which the water or air pollution occurred or, in

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

3                    ...."

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

5                    **"§ 143-215.2. Special orders.**

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

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

23                    **"§ 62-133.13. Recovery of costs related to the management of coal combustion residuals**  
24                    **and unlawful discharges from coal combustion residuals surface impoundments**  
25                    **to the surface waters of the State.**

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

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

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

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

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

47                    **SECTION 3.** There is appropriated from the General Fund to the Department of  
48                    Environmental Quality the sum of seventy-five thousand dollars (\$75,000) in recurring funds to  
49                    implement the requirements of this act.

50                    **SECTION 4.** The provisions of G.S. 143C-5-2 do not apply to this act.

51                    **SECTION 5.** This act is effective when it becomes law.