

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35229-RIa-20A

Short Title: Polluter Pays.

(Public)

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

Referred to:

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.

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 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



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

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

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

1 "

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

3 "**§ 143-215.2. Special orders.**

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

20 **SECTION 2.** There is appropriated from the General Fund to the Department of
21 Environmental Quality the sum of seventy-five thousand dollars (\$75,000) in recurring funds for
22 the 2021-2022 fiscal year to implement the requirements of this act.

23 **SECTION 3.** The provisions of G.S. 143C-5-2 do not apply to this act.

24 **SECTION 4.** This act is effective when it becomes law.