

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

1

SENATE BILL 744

Short Title: Polluter Pays. (Public)

Sponsors: Senators Garrett and Marcus (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 18, 2020

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 AND TO PROHIBIT AN ELECTRIC PUBLIC UTILITY FROM RECOVERING COSTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION ASH AND UNLAWFUL DISCHARGES FROM COAL ASH PONDS.

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



* S 7 4 4 - V - 1 *

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, 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.