

## **Chapter 113A.**

### **Pollution Control and Environment.**

#### Article 1.

#### Environmental Policy Act.

##### **§ 113A-1. Title.**

This Article shall be known as the North Carolina Environmental Policy Act of 1971. (1971, c. 1203, s. 1; 1991, c. 431, s. 1.)

##### **§ 113A-2. Purposes.**

The purposes of this Article are: to declare a State policy which will encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment, maintain a healthy and pleasant environment, and preserve the natural beauty of the State; to encourage an educational program which will create a public awareness of our environment and its related programs; to require agencies of the State to consider and report upon environmental aspects and consequences of their actions involving the expenditure of public moneys or use of public land; and to provide means to implement these purposes. (1971, c. 1203, s. 2; 1991 (Reg. Sess., 1992), c. 945, s. 1.)

##### **§ 113A-3. Declaration of State environmental policy.**

The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s. 3.)

##### **§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

- (1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and
- (2) Every State agency shall include in every recommendation or report on any action involving significant expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:
  - a. The direct environmental impact of the proposed action;
  - b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
  - c. Mitigation measures proposed to minimize the impact;
  - d. Alternatives to the proposed action;

- e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
  - f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.
- (2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. The failure of an agency to provide comments within the comment period established under this subdivision or to request an extension for a specific period of time set forth in the request shall be treated by the responsible official as a conclusion by that agency that there is no significant environmental impact. Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.
- (3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the School of Government at the University of North Carolina at Chapel Hill. (1971, c. 1203, s. 4; 1987, c. 827, s. 125; 1991, c. 431, s. 2; 1991 (Reg. Sess., 1992), c. 945, s. 2; 2006-264, s. 29(g); 2015-90, s. 1.)

**§ 113A-5. Review of agency actions involving major adverse changes or conflicts.**

Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c. 1203, s. 5.)

**§ 113A-6. Conformity of administrative procedures to State environmental policy.**

All agencies of the State shall periodically review their statutory authority, administrative rules, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes

and provisions of this Article and shall propose to the Governor such measures as may be necessary to bring their authority, rules, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6; 1987, c. 827, s. 126.)

**§ 113A-7. Other statutory obligations of agencies.**

Nothing in this Article shall in any way affect nor detract from specific statutory obligations of any State agency

- (1) To comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it,
- (2) To coordinate or consult with any other State agency or federal agency, or
- (3) To act, or refrain from acting contingent upon the recommendations or certification of any other State agency or federal agency. (1971, c. 1203, s. 7.)

**§ 113A-8. Major development projects.**

(a) The governing bodies of all cities, counties, and towns acting individually, or collectively, may by ordinance require any special-purpose unit of government or private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects for consideration by those governing bodies in matters within their jurisdiction. Any such ordinance may not be designed to apply to only a particular major development project, and shall be applied consistently.

(b) Any ordinance adopted pursuant to this section shall exempt those major development projects for which a detailed statement of the environmental impact of the project or a functionally equivalent permitting process is required by federal or State law, regulation, or rule.

(c) Any ordinance adopted pursuant to this section shall establish minimum criteria to be used in determining whether a statement of environmental impact is required. A detailed statement of environmental impact may not be required for a project that does not exceed the minimum criteria and any exceptions to the minimum criteria established by the ordinance.

(d) Any ordinance adopted pursuant to this section shall exempt from its requirements the certain cases for which an environmental document is not required as set forth in G.S. 113A-12. (1971, c. 1203, s. 8; 1991, c. 431, s. 3; 2014-90, s. 5.)

**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22L. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article. (1998-168, s. 6; 2007-484, s. 43.7C; 2007-518, s. 4.)

**§ 113A-9. Definitions.**

As used in this Article, unless the context indicates otherwise, the term:

- (1) "Environmental assessment" (EA) means a document prepared by a State agency to evaluate whether the probable impacts of a proposed action require the preparation of an environmental impact statement under this Article.
- (2) "Environmental document" means an environmental assessment, an environmental impact statement, or a finding of no significant impact.
- (3) "Environmental impact statement" (EIS) means the detailed statement described in G.S. 113A-4(2).

- (4) "Finding of no significant impact" (FONSI) means a document prepared by a State agency that lists the probable environmental impacts of a proposed action, concludes that a proposed action will not result in a significant adverse effect on the environment, states the specific reason or reasons for such conclusion, and states that an environmental impact statement is not required under this Article.
- (5) "Major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than ten contiguous acres in extent.
- (6) "Minimum criteria" means a rule that designates a particular action or class of actions for which the preparation of environmental documents is not required.
- (7) "Public land" means all land and interests therein, title of which is vested in the State of North Carolina, in any State agency, or in the State for the use of any State agency or political subdivision of the State, and includes all vacant and unappropriated land, swampland, submerged land, land acquired by the State by virtue of being sold for taxes or by any other manner of acquisition, or escheated land.
- (7a) "Significant expenditure of public moneys" means expenditures of public funds greater than ten million dollars (\$10,000,000) for a single project or action or related group of projects or actions. For purposes of this subdivision, contributions of funds or in-kind contributions by municipalities, counties, regional or special-purpose government agencies, and other similar entities created by an act of the General Assembly and in-kind contributions by a non-State entity shall not be considered an expenditure of public funds for purposes of calculating whether such an expenditure is significant.
- (8) "Special-purpose unit of government" includes any special district or public authority.
- (9) "State agency" includes every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include local governmental units or bodies such as cities, towns, other municipal corporations or political subdivisions of the State, county or city boards of education, other local special-purpose public districts, units or bodies of any kind, or private corporations created by act of the General Assembly, except in those instances where programs, projects and actions of local governmental units or bodies are subject to review, approval or licensing by State agencies in accordance with existing statutory authority, in which case local governmental units or bodies shall supply information which may be required by such State agencies for preparation of any environmental statement required by this Article.
- (10) "State official" means the Director, Commissioner, Secretary, Administrator or Chairman of the State agency having primary statutory authority for specific programs, projects or actions subject to this Article, or his authorized representative.

- (11) "Use of public land" means land-disturbing activity of greater than 10 acres that results in substantial, permanent changes in the natural cover or topography of those lands that includes:
- a. The grant of a lease, easement, or permit authorizing private use of public land; or
  - b. The use of privately owned land for any project or program if (i) the State or any agency of the State has agreed to purchase the property or to exchange the property for public land and (ii) the use meets the other requirements of this subdivision. (1971, c. 1203, s. 9; 1991 (Reg. Sess., 1992), c. 945, s. 3; 2015-90, s. 2.)

**§ 113A-10. Provisions supplemental.**

The policies, obligations and provisions of this Article are supplementary to those set forth in existing authorizations of and statutory provisions applicable to State agencies and local governments. In those instances where a State agency is required to prepare an environmental document or to comment on an environmental document under provisions of federal law, no separate environmental document shall be required to be prepared or published under this Article so long as the environmental document or comment meets the provisions of this Article. (1971, c. 1203, s. 10; 1991 (Reg. Sess., 1992), c. 945, s. 4; 2015-90, s. 3.)

**§ 113A-11. Adoption of rules.**

- (a) The Department of Administration shall adopt rules to implement this Article.
- (b) Each State agency shall adopt rules that establish minimum criteria. An agency may include a particular action or class of actions in its minimum criteria only if the agency makes a specific finding that the action or class of actions has no significant long-term impact on the environment. Rules establishing minimum criteria shall be consistent with rules adopted by the Department of Administration. (1991 (Reg. Sess., 1992), c. 899, s. 1; c. 945, s. 7(b); 2015-90, s. 4.)

**§ 113A-12. Environmental document not required in certain cases.**

Notwithstanding any other provision in this Article, no environmental document shall be required in connection with:

- (1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, natural gas line, or similar infrastructure project within or across the right-of-way of any street or highway.
- (2) An action approved under:
  - a. A general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).
  - b. A Coastal Habitat Protection Plan under G.S. 143B-279.8.
  - c. A special order pursuant to G.S. 143-215.2 or G.S. 143-215.110.
  - d. An action taken to address an emergency under G.S. 143-215.3 or other similar emergency conditions.
  - e. A remedial or similar action to address contamination under Chapter 130A or 143 of the General Statutes, including a brownfield agreement entered into under G.S. 130A-310.32.
  - f. A certificate of convenience and necessity under G.S. 62-110.

- g. An industrial or pollution control project approval by the Secretary of Commerce under Chapter 159C of the General Statutes.
  - h. A project approved as a water infrastructure project under Chapter 159G of the General Statutes.
  - i. A certification issued by the Division of Water Resources of the Department of Environmental Quality under the authority granted to the Environmental Management Commission by G.S. 143B-282(a)(1)u.
- (3) A lease or easement granted by a State agency for:
    - a. The use of an existing building or facility.
    - b. Placement of a wastewater line or other structures or uses on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
    - c. A shellfish cultivation lease granted under G.S. 113-202.
    - d. A facility for the use or benefit of The University of North Carolina System, the North Carolina community college system, the North Carolina public school systems, or one or more constituent institutions of any of those systems.
    - e. A health care facility financed pursuant to Article 1 of Chapter 131A of the General Statutes or receiving a certificate of need under Article 9 of Chapter 131E of the General Statutes.
  - (4) The construction of a driveway connection to a public roadway.
  - (5) Any State action in connection with a project for which public lands are used and/or public monies are expended if the land or expenditure is provided as an incentive for the project pursuant to an agreement that makes the incentives contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.
  - (6) A major development as defined in G.S. 113A-118 that receives a permit issued under Article 7 of Chapter 113A of the General Statutes.
  - (7) The issuance of an executive order under G.S. 166A-19.30(a)(5) waiving the requirement for an environmental document.
  - (8) The redevelopment or reoccupation of an existing building or facility, so long as any additions to the existing building or facility do not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility and so long as any new construction does not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility.
  - (9) Facilities created in the course of facilitating closure activities under Part 2I of Article 9 of Chapter 130A of the General Statutes.
  - (10) Any project or facility specifically required or authorized by an act of the General Assembly.
  - (11) Any project undertaken as mitigation for the impacts of an approved project or to mitigate or avoid harm from natural environmental change, including wetlands and buffer mitigation projects and banks, coastal protections and mitigation projects, and noise mitigation projects. (1991 (Reg. Sess., 1992), c. 945, ss. 5, 7(a); c. 1030, s. 51.15; 2010-186, s. 1; 2010-188, s. 1; 2011-398, s. 59(a); 2014-90, s. 4; 2014-100, s. 14.7(j); 2015-90, s. 5; 2015-241, s. 14.30(c); 2019-240, s. 27.1(c).)

**§ 113A-13. Administrative and judicial review.**

The preparation of an environmental document required under this Article is intended to assist the responsible agency in determining the appropriate decision on the proposed action. An environmental document required under this Article is a necessary part of an application or other request for agency action. Administrative and judicial review of an environmental document is incidental to, and may only be undertaken in connection with, review of the agency action. No other review of an environmental document is allowed. (1991 (Reg. Sess., 1992), c. 945, ss. 5, 7(a).)

**§§ 113A-14 through 113A-20. Reserved for future codification purposes.**