

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1124  
Committee Substitute Favorable 5/9/89  
Environment & Natural Resources Senate Committee Substitute Adopted 8/7/89  
Corrected Copy 8/8/89

Short Title: Procedure for Consent Order by EMC.

(Public)

Sponsors:

Referred to:

April 10, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PUBLIC NOTICE OF PROPOSED SPECIAL ORDERS  
BY CONSENT AND FOR PUBLIC MEETINGS CONCERNING PROPOSED  
SPECIAL ORDERS BY CONSENT IF THE ENVIRONMENTAL  
MANAGEMENT COMMISSION DETERMINES THAT THERE IS A  
SIGNIFICANT INTEREST IN HOLDING SUCH MEETING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.2 reads as rewritten:

"§ 143-215.2. Special orders.

(a) Issuance. – The Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the ~~water-water~~, subject to the provisions of subsection (a1) of this section regarding proposed orders.

1 and such ~~document~~ consent order, when entered into by the Commission after public  
2 review, shall have the same force and effect as a special order of the Commission issued  
3 pursuant to hearing. Provided, however, that the provisions of this section shall not  
4 apply to any agricultural operation, such as the use or preparation of any land for the  
5 purposes of planting, growing, or harvesting plants, crops, trees or other agricultural  
6 products, or raising livestock or poultry.

7 (a1) Public Notice and Review of Consent Orders.

8 (1) The Commission shall give notice of a proposed consent order to the  
9 proper State, interstate, and federal agencies, to interested persons, and  
10 to the public. The Commission may also provide any other data it  
11 considers appropriate to those notified. The Commission shall  
12 prescribe the form and content of the notice. The notice shall be given  
13 at least 45 days prior to any final action regarding the consent order.  
14 Public notice shall be given by publication of the notice one time in a  
15 newspaper having general circulation within the county in which the  
16 pollution originates.

17 (2) Any person who desires a public meeting on any proposed consent  
18 order may request one in writing to the Commission within 30 days  
19 following date of the notice of the proposed consent order. The  
20 Commission shall consider all such requests for meetings. If the  
21 Commission determines that there is significant public interest in  
22 holding a meeting, the Commission shall schedule a meeting and shall  
23 give notice of such meeting at least 30 days in advance to all persons  
24 to whom notice of the proposed consent order was given and to any  
25 other person requesting notice. At least 30 days prior to the date of  
26 meeting, the Commission shall also have a copy of the notice of the  
27 meeting published at least one time in a newspaper having general  
28 circulation within the county in which the pollution originates. The  
29 Commission shall prescribe the form and content of notices under this  
30 subsection.

31 (3) The Commission shall prescribe the procedures to be followed in such  
32 meetings. If the meeting is not conducted by the Commission, detailed  
33 minutes of the meeting shall be kept and shall be submitted, along with  
34 any other written comment, exhibits or other documents presented at  
35 the meeting, to the Commission for its consideration prior to final  
36 action granting or denying the consent order.

37 (4) The Commission shall take final action on a proposed consent not later  
38 than 60 days following notice of the proposed consent order or, if a  
39 public meeting is held, within 90 days following such meeting.

40 (b) Procedure to Contest Certain Orders. – A special order that is issued without  
41 the consent of the person affected may be contested by that person by filing a petition  
42 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
43 person affected does not file a petition within the required time, the order is final and is  
44 not subject to review.

1 (d) Effect of Compliance. – Any person who installs a treatment works for the  
2 purpose of alleviating or eliminating water pollution in compliance with the terms of,  
3 or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1,  
4 or a special order, consent special order, assurance of voluntary compliance or similar  
5 document issued pursuant to this section, or a final decision of the Commission or a  
6 court rendered pursuant to either of said sections, shall not be required to take or refrain  
7 from any further action nor be required to achieve any further results under the terms of  
8 this or any other State law relating to the control of water pollution, for a period to be  
9 fixed by the Commission or court as it shall deem fair and reasonable in the light of all  
10 the circumstances after the date when such special order, consent special order,  
11 assurance of voluntary compliance, other document, or decision, or the conditions of  
12 such permit become finally effective, if:

13 (1) The treatment works result in the elimination or alleviation of water  
14 pollution to the extent required by such permit, special order, consent  
15 special order, assurance of voluntary compliance or other document, or  
16 decision and complies with any other terms thereof; and

17 (2) Such person complies with the terms and conditions of such permit,  
18 special order, consent special order, assurance of voluntary  
19 compliance, other document, or decision within the time limit, if any,  
20 specified therein or as the same may be extended, and thereafter  
21 remains in compliance."

22 Sec. 2. G.S. 143-215.110 reads as rewritten:

23 **"§ 143-215.110. Special orders.**

24 (a) Issuance. – The Commission is hereby empowered, after the effective date of  
25 standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from  
26 time to time to modify or revoke) a special order or other appropriate instrument, to any  
27 person whom it finds responsible for causing or contributing to any pollution of the air  
28 within the area for which standards have been established. Such an order or instrument  
29 may direct such person to take or refrain from taking such action, or to achieve such  
30 results, within a period of time specified by such special order, as the Commission  
31 deems necessary and feasible in order to alleviate or eliminate such pollution. The  
32 Commission is authorized to enter into consent special orders, assurances of voluntary  
33 compliance or other similar documents by agreement with the person responsible for  
34 pollution of the air, subject to the provisions of subsection (a1) of this section regarding  
35 proposed orders, and such ~~document~~—consent order, when entered into by the  
36 Commission after public review, shall have the same force and effect as a special order  
37 of the Commission issued pursuant to hearing.

38 (a1) Public Notice and Review of Consent Orders.

39 (1) The Commission shall give notice of a proposed consent order to the  
40 proper State, interstate, and federal agencies, to interested persons, and  
41 to the public. The Commission may also provide any other data it  
42 considers appropriate to those notified. The Commission shall  
43 prescribe the form and content of the notice. The notice shall be given  
44 at least 45 days prior to any final action regarding the consent order.

1           Public notice shall be given by publication of the notice one time in a  
2           newspaper having general circulation within the county in which the  
3           pollution originates.

4           (2) Any person who desires a public meeting on any proposed consent  
5           order may request one in writing to the Commission within 30 days  
6           following date of the notice of the proposed consent order. The  
7           Commission shall consider all such requests for meetings. If the  
8           Commission determines that there is significant public interest in  
9           holding a meeting, the Commission shall schedule a meeting and shall  
10           give notice of such meeting at least 30 days in advance to all persons  
11           to whom notice of the proposed consent order was given and to any  
12           other person requesting notice. At least 30 days prior to the date of  
13           meeting, the Commission shall also have a copy of the notice of the  
14           meeting published at least one time in a newspaper having general  
15           circulation within the county in which the pollution originates. The  
16           Commission shall prescribe the form and content of notices under this  
17           subsection.

18           (3) The Commission shall prescribe the procedures to be followed in such  
19           meetings. If the meeting is not conducted by the Commission, detailed  
20           minutes of the meeting shall be kept and shall be submitted, along with  
21           any other written comment, exhibits or other documents presented at  
22           the meeting, to the Commission for its consideration prior to final  
23           action granting or denying the consent order.

24           (4) The Commission shall take final action on a proposed consent not later  
25           than 60 days following notice of the proposed consent order or, if a  
26           public meeting is held, within 90 days following such meeting.

27           (b) Procedure to Contest Certain Orders. – A special order that is issued without  
28 the consent of the person affected may be contested by that person by filing a petition  
29 for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the  
30 person affected does not file a petition within the required time, the order is final and is  
31 not subject to review.

32           (d) Effect of Compliance. – Any person who installs an air-cleaning device for  
33 purpose of alleviating or eliminating air pollution in compliance with the terms of, or as  
34 result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a  
35 special order, consent special order, assurance of voluntary compliance or similar  
36 document issued pursuant to this section, or a final decision of the Commission or a  
37 court, rendered pursuant to either of said sections, shall not be required to take or refrain  
38 from any further action nor be required to achieve any further results under the terms of  
39 this or any other State law relating to the control of air pollution, for a period to be fixed  
40 by the Commission or court as it shall deem fair and reasonable in the light of all the  
41 circumstances after the date such special order, consent special order, assurance of  
42 voluntary compliance, other document or decision, or the conditions of such permit  
43 become finally effective, if:

- 1           (1)    The air-cleaning devices result in the elimination or alleviation of air  
2                    pollution to the extent required by such permit, special order, consent  
3                    special order, assurance of voluntary compliance, or other document or  
4                    decision and complies with any other terms thereof; and  
5           (2)    Such person complies with the terms and conditions of such permit,  
6                    special order, consent special order, assurance of voluntary  
7                    compliance, other document or decision within the time limit, if any,  
8                    specified therein or as the same may be extended, and thereafter  
9                    remains in compliance."

10           Sec. 3. This act shall become effective 1 October 1989, and applies to all  
11 proposed consent orders entered into on or after that date.