

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 766
HOUSE BILL 1124

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

(a1) Public Notice and Review of Consent Orders.

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

newspaper having general circulation within the county in which the pollution originates.

- (2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.
- (3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.
- (4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

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

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

- (1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent

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

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

"§ 143-215.110. Special orders.

(a) Issuance. – The Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, 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 air 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 air, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such ~~document~~ consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

- (1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.
- (2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general

circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 11th day of August, 1989.